

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING	PAGE 1 OF 4 PAGES
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2. CONTRACT (Proc. Inst. Ident.) NO. Letter Contract#DE-AC02-06CH11377	3. EFFECTIVE DATE 08/01/2006	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 02-06CH11377.000A
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5. ISSUED BY U.S. Department of Energy Chicago Office 9800 South Cass Avenue Argonne, IL 60439	6. ADMINISTERED BY (If other than Item 5)
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7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CNI Information Technology, LLC 7100 N. Classen Blvd., Suite 403 Oklahoma City, OK 73116 DUNS #148965473 Attn: Mr. Danny Russell	8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)
	9. DISCOUNT FOR PROMPT PAYMENT N/A
	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ITEM Block 12

11. SHIP TO/MARK FOR N/A	12. PAYMENT WILL BE MADE BY U.S. Department of Energy OakRidge Financial Services Center, P.O Box 5748 - Oak Ridge, TN 37831
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: 15 U.S.C. 637(a)(1) <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()	14. ACCOUNTING AND APPROPRIATION DATA 89X0222.91, KX0310203
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
					Limitation of Government Liability
15G. TOTAL AMOUNT OF CONTRACT					\$ 505,000.00

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ 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 condition 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 and all other contractual documents necessary.
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19A. NAME AND TITLE OF SIGNER (Type or print) DANNY RUSSELL MANAGER	20A. NAME AND TITLE OF CONTRACTING OFFICER Christopher D. Swierczek, Team Leader Operations Division Office of Acquisition and Assistance Contracting Officer
19B. NAME OF CONTRACTOR BY Danny Russell (Signature of person authorized to sign)	20B. UNITED STATES OF AMERICA BY [Signature] (Signature of Contracting Officer)
19C. DATE SIGNED 8-1-2006	20C. DATE SIGNED 7/31/06

- (2) To the extent consistent with subparagraph (c) (1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

3. FAR 52.216-26 -- Payments of Allowable Costs Before Definitization (Dec. 2002)

- (a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:
 - (1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts; provided, that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.
 - (2) One hundred percent of approved costs representing cost-reimbursement subcontracts; provided, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.
 - (3) Eighty-five percent of all other approved costs.
- (b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.
- (c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. 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 incurred by the Contractor in the performance of this contract.

- (d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes --
- (1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;
 - (2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
 - (i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made--
 - (A) In accordance with the terms and conditions of a subcontract or invoice; and
 - (B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;
 - (ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;
 - (iii) Direct labor;
 - (iv) Direct travel;
 - (v) Other direct in-house costs; and
 - (vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
 - (3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.
- (e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.
- (f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be --
- (1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or
 - (2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

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SUPPLIES OR SERVICES AND PRICES/COSTS

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FINANCIAL LIMITATIONS

PART I

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ITEMS BEING PROCURED

- (a) During the period August 1, 2006 through July 31, 2007, the Contractor shall devote the level of effort set forth below and provide for subcontractor(s) effort, if any, or its equivalent as may be approved by the Contracting Officer, for the performance of the work set forth in Part I, Section C.1 STATEMENT OF WORK, and fulfilling the other requirements of the contract including reports as set forth in section C.2 PLANS AND REPORTS.

<u>Kind of Effort</u>	<u>No. of Labor-hours</u>
Direct Productive Labor Hours (DPLH)	47,840

- (b) All the work under this contract shall be performed under the general guidance and direction of the Technical Manager whose responsibilities are defined in the clause entitled "**Technical Direction**" set forth in Part I, Section H - **Special Contract Requirements**. Such guidance and direction shall not, however, effect any change in the Schedule, Statement of Work, Reporting Requirements, or other provisions of this contract. Such changes shall be only by action of the Contracting Officer.

B.2 ESTIMATED COST BASE FEE, AWARD FEE, OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS

- (a) The estimated cost for the performance of the work under this contract, is \$ _____ *
- (b) The base fee for the performance of the work under this contract is \$ _____ * and is payable in accordance with Section H.8 - BASE AND AWARD FEE, of the Schedule. In addition, a maximum performance based award fee (award fee pool) of \$ _____ * is available for payment of effort under B.1., ITEMS BEING PROCURED, in accordance with the aforementioned Section H.8.

* To Be Definitized

There shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual cost for performance of that work; provided, however, that 1) a material change of plus or minus ten-percent in the level of effort specified in Section B.1., ITEMS BEING PROCURED, may result in an equitable adjustment in accordance with the procedures provided for in the clause entitled "Changes" set forth in Part II, Section I, Appendix A; and 2) said fee may be adjusted in accordance with Section H.8, BASE AND AWARD FEE. Subject to the certification by the Contractor of the level of effort expended, the base fee specified herein shall become due and payable in periodic installments (but not more frequently than bi-weekly) in amounts proportionate to the Direct Productive Labor Hours (DPLH) expended during each billing period. Pursuant to Section H.8 BASE AND AWARD FEE, the award fee shall be payable on an annual basis.

- (c) Pursuant to the clause entitled, "Limitation of Funds," set forth in Part II, Section I, Appendix A, the amount of \$505,000.00 has been allotted and is available for payment of allowable costs and base and award fee under this contract. The period of performance which it is estimated the allotted amount will cover is through September 30, 2006.
- (d) The amount presently obligated by the Government with respect to this contract is \$505,000.00. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract).
- (e) The giving of any notice by either party under this article or the clauses entitled, "Limitation of Funds" or "Limitation of Cost" set forth in Part II, Section I, Appendix A, as applicable, shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions if the Termination Clause for this contract set forth in Part II, Section I, Appendix A.
- (f) When funds are obligated under this contract, DOE shall inform the Contractor in writing regarding any limitations on amounts available for operating and plant and capital equipment expenditures under this contract. The limitations so established shall be binding on the Contractor.
- (g) The clause entitled "Limitation of Funds" shall be applicable and the clause entitled "Limitation of Cost" inapplicable until such time as an amount equal to the estimated cost set forth in paragraph (a) above is obligated to this contract, and thereafter the Limitation of Cost clause shall be applicable and the Limitation of Funds clause inapplicable.

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SECTION C

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C.2 PLANS AND REPORTS

C.1 STATEMENT OF WORK

The statement of work to be performed under this contract is set forth in Part III, Section J – List of Attachments.

C.2 PLANS AND REPORTS

The Contractor shall prepare and submit (postage prepaid) the plans and reports indicated on DOE F 1332.1, Reporting Requirements Checklist, incorporated in Part III, Section J – List of Attachments, to the addresses indicated in the attachment to the form. The level of detail the contractor must provide in the plans and reports shall be commensurate with the scope and complexity of the task and the reporting categories delineated in Block 4, Planning and Reporting Requirements, or Block 6 Special Instructions, on the DOE F 1332.1 or in a particular contract clause. The Contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted is compatible with the data elements that the prime contractor is responsible for submitting to DOE. If subcontractors are involved, the prime contractor plans and reports submissions shall be structured in such a manner to permit clear identification of the subcontractor's costs and manpower inputs. Plans and reports submitted in compliance with this provision are in addition to any other reporting requirements of this contract. Notwithstanding the "Changes" clause of the contract, set forth in Part II, Section I, Appendix A, the Contracting Officer may require reasonable variations in the quantity of the plans and reports to be submitted pursuant to the above without any adjustment in the fee, if any, under this contract.

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D.2 MARKING

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SECTION D

PACKAGING AND MARKING

D.1 PACKAGING

- (a) 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).
- (b) Except for those reports 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 first-class mail, unless the urgency of the deliverable sufficiently justifies the use of priority mail.

D.2. MARKING

- (a) 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).
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the Contracting Officer.

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COST-REIMBURSEMENT (APR 1984)
- E.2 ACCEPTANCE

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SECTION E

E.1. FAR 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 re-performance, the Government may- (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may-(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or (2) Terminate the contract for default.

E.2. ACCEPTANCE

Acceptance of all work and effort under this contract (including reporting requirements) shall be accomplished by the Contracting Officer or any duly authorized representative.

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- ALTERNATE I (APR 1984)

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SECTION F

DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

The performance of the work described in Part I, Section C- Description/Specifications/Work Statement shall commence on August 1, 2006, and shall continue to completion thereof, estimated to occur on or about July 31, 2007 unless sooner terminated as hereinafter provided.

F.2 FAR 52.242-15 STOP WORK ORDER (AUG 1989) – ALTERNATE I (APR 1984).

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

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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 CORRESPONDENCE PROCEDURES

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

- (a) Subject Line(s) - All correspondence should contain a subject line, commencing with the contract number and subject matter. An example is illustrated below"

SUBJECT: CONTRACT NO. DE-AC02-06CH11377, REQUEST FOR
SUBCONTRACT CONSENT.

- (b) Technical Correspondence - Technical correspondence (as used herein, this term excludes correspondence where patent or proprietary data issues are involved or correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of this contract) should be addressed to the DOE/Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.
- (c) Correspondence Regarding Inventions - All correspondence for Patent related matters (inventions, etc.) should be mailed to

U.S. Department of Energy
Chicago Office
Office of Intellectual Property Law
9800 South Cass Avenue
Argonne, Illinois 60439

Information copies of patent related correspondence should be sent to the Contracting Officer.

Also see the paragraph entitled "Publication", if included in this contract, under the article entitled, "Patent Rights" set forth in Part II, Section I, Appendix B of this contract and the DOE F 1332.1 - Reporting Requirements Checklist set forth in Part III, Section J - List of Attachments, of this contract.

- (d) Other Correspondence - All other correspondence, except for reporting of inventions, should be addressed to the Contracting Officer, with information copies of the correspondence to the DOE COR and DOE Intellectual Property Counsel when deemed appropriate (where patent or technical data issues are involved).

PART I

SECTION G

GOVERNMENT CONTACTS FOR POST AWARD ADMINISTRATION

G.2 GOVERNMENT CONTACTS FOR POST AWARD ADMINISTRATION

(a) DOE Contracting Officer

For definition see Part II, Section I, Appendix A, Clause 1, "Definitions" of this contract. The Contracting Officer is the only official who can:

- (1) assign additional work within the general scope of the Statement of Work of the contract;
- (2) issue a change as defined in the "Changes" clause of the contract;
- (3) cause an increase or decrease in the total estimated cost or the time required for contract performance;
- (4) change any of the expressed terms, conditions or specifications of the contract; and
- (5) accept non-conforming work.

(b) DOE Contract Specialist for Administration

The Contract Specialist should be used as the point of contact for all but technical and patent related matters (see G.1).

The Contract Specialist for this contract is:

Name: Tanga Baylor

Address: U.S. Department of Energy
Chicago Office
Office of Acquisition & Assistance
9800 South Cass Avenue
Argonne, Illinois 60439

Telephone No.: (630) 252-2214

Any change in the DOE Contract Specialist may be made administratively by letter from the Contracting Officer.

(c) DOE Contracting Officer's Representative (COR)

The limitations of the Technical Manager's authority are defined in Part I, Section H, "Technical Direction" clause.

The performance of work under this contract is subject to the direction of the COR in accordance with the "Technical Direction" clause of the contract. The COR should be used as the point of contact on all technical matters (see G.1 (b)). The COR for this contract is:

Name: David Frietsch
Address: U.S. Department of Energy
Chicago Office
Information Management (IM) Services
9800 S. Cass Avenue
Argonne, IL 60439

Telephone No. (630) 252-2178

Any change in the DOE COR may be made administratively by letter from the Contracting Officer.

(d) DOE Intellectual Property Counsel

See G. 1 (c) .

(e) DOE Property Administrator

Property correspondence should be addressed to the Contracting Officer and property matters referred to the Contract Specialist unless property administration has been delegated, in which case, separate instructions will be sent administratively by letter from the Contracting Officer, which will supersede this paragraph G.2(e).

G.3 BILLING INSTRUCTIONS

Vouchers: Certified original vouchers shall be submitted to the Payment Office (See Block 12 of the SF 26) and copies shall be submitted to the DOE Contract Specialist (See G.2 (b)) and the DOE Contracting Officer's Representative (See G.2 (c)) in accordance with the Billing Instructions set forth in Part III, Section J -List of Attachments, and in accordance with the Allowable Cost and Payment provisions of this contract as set forth in Part I, Section H and Part II, Section I, Appendix A.

Additionally, the Contractor shall identify the individual in its organization to be contacted relative to each voucher.

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PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 SUBCONTRACTS, PURCHASE ORDERS AND CONSULTING SERVICES

- (a) Prior to the placement of subcontracts and in accordance with the clause entitled "Subcontracts," as set forth in Part II, Section I, Appendix A - General Provisions, the Contractor shall ensure that:
 - (1) Subcontracts contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts;
 - (2) Appropriate Representations and Certifications have been received from the Subcontractor;
 - (3) Any, required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received pursuant to the clause entitled "Subcontracts". Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (i) to revise this contract or any of the respective obligations of the parties thereunder, or (ii) to create any subcontractor privity of contract with the Government.
- (b) In order to insure that the proposed subcontract is properly evaluated prior to Contracting Officer consent, a copy of the proposed subcontract document along with any documentation required by the clause, "Subcontracts," shall be submitted by the prime contractor to the responsible Contracting Officer.
- (c) DOE Acquisition Regulations (Subpart 908.71- Acquisition of Special Items) set forth requirements and procedures for the acquisition of special items by DOE contractors such as: motor vehicles, alcohol, helium, calibration services, aircraft, Government license tags, office machines, office furniture and furnishings, fuels and packaged petroleum products, coal, forms, electronic data processing tape, tabulating machine cards, rental of post office boxes, wiretapping and eavesdropping equipment, materials handling equipment, arms and ammunition, security cabinets, filing cabinets, heavy water, and precious metals such as platinum, palladium, iridium, osmium, rhodium, ruthenium, lithium, gold and silver, etc. Contractors should familiarize themselves with the contents of this regulation.

- (d) In addition to the provisions of the clause entitled "Subcontracts," the prior written consent of the Contracting Officer shall be obtained for the services of consultants when: (1) any employee of the Contractor is to be reimbursed as a "consultant" under this contract, or (2) the consulting agreement provides for a daily rate in excess of \$1,000, exclusive of travel costs, or (3) the services of any consultant under this contract exceed 60 days in any calendar year, or exceed a total value of \$10,000.
- (e) Whenever such consent is required the contractor shall furnish to the Contracting Officer information concerning the need for and rationale for the selection of such consultant and the basis for determination of the reasonableness of the fee to be paid, including, but not limited to, whether such fees to be paid to any consultant exceed the lowest fee charged by consultants to other firms for performing consulting services that are similar in nature.

H.2 DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Providing written information to the contractor that assist in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.
- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"

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

H.3 COST PRINCIPLES FOR COMMERCIAL ORGANIZATIONS

The cost principles contained in Federal Acquisition Regulation (FAR) Subpart 31.2, Contracts with the Commercial Organizations, and Department of Energy Acquisition Regulation (DEAR) Subpart 931.2, in effect on the effective date of the contract, are hereby incorporated by reference into this contract and shall be utilized to determine allowability of cost under this contract.

For ease of reference the following is a listing of the applicable cost principles and their effective dates.

<u>Number</u>	<u>Reference</u>	<u>Title</u>	<u>Date</u>
1.	FAR 31.201-1	Composition of total cost.....	May 2004
2.	FAR 31.201-2	Determining allowability	May 2004
3.	FAR 31.201-3	Determining reasonableness	July 1987
4.	FAR 31.201-4	Determining allocability	Apr 1984
5.	FAR 31.201-5	Credits	Dec 1998
6.	FAR 31.201-6	Accounting for unallowable costs	Nov 2005
7.	FAR 31.201-7	Construction and architect-engineer contracts.....	Apr 1984
8.	FAR 31.202	Direct costs.....	May 2004
9.	FAR 31.203	Indirect costs	May 2004
10.	FAR 31.204	Application of principles and procedures	Jul 2004
11.	FAR 31.205-1	Public relations and advertising costs	Aug 2003
12.	FAR 31.205-2	[Reserved]	
13.	FAR 31.205-3	Bad debts.....	Apr 1984
14.	FAR 31.205-4	Bonding costs:.....	Apr 1984
15.	FAR 31.205-5	[Reserved]	
16.	FAR 31.205-6	Compensation for personal services	Jul 2005
17.	FAR 31.205-7	Contingencies	Jul 2004
18.	FAR 31.205-8	Contributions or donations	Apr 1986
19.	FAR 31.205-9	[Reserved]	
20.	FAR 31.205-10	Cost of money	Jun 2003
21.	FAR 31.205-11	Depreciation	Dec 2003
22.	FAR 31.205-12	Economic planning costs	Oct 2003
23.	FAR 31.205-13	Employee morale, health, welfare, food service, and dormitory costs and credits	Oct 2003
24.	FAR 31.205-14	Entertainment costs	Oct 1995
25.	FAR 31.205-15	Fines, penalties, and mischarging costs.....	Jan 1991
26.	FAR 31.205-16	Gains and losses on disposition or impairment of depreciable property or other capital assets	Jul 2005
27.	FAR 31.205-17	Idle facilities and idle capacity costs	Feb 2002
28.	FAR 31.205-18	Independent research and development and bid and proposal costs (Feb 1998) as modified by DEAR 931.205-18(JUN 1995)	
29.	FAR 31.205-19	Insurance and indemnification	Dec 2003
30.	FAR 31.205-20	Interest and other financial costs	Nov 1999
31.	FAR 31.205-21	Labor relations costs	Dec 2001
32.	FAR 31.205-22	Lobbying and political activity costs	Jan 1997
33.	FAR 31.205-23	Losses on other contracts	Apr 1984
34.	FAR 31.205-24	[Reserved]	
35.	FAR 31.205-25	Manufacturing and production engineering costs	Apr 1984
36.	FAR 31.205-26	Material costs	Jul 2004
37.	FAR 31.205-27	Organization costs	Apr 1988
38.	FAR 31.205-28	Other business expenses	Jun 2003
39.	FAR 31.205-29	Plant protection costs.....	Apr 1984

40.	FAR 31.205-30	Patent costs	Apr 1984
41.	FAR 31.205-31	Plant reconversion costs.....	Apr 1984
42.	FAR 31.205-32	Precontract costs	Apr 1984
43.	DEAR 931.205-32	Precontract costs	Oct 1984
44.	FAR 31.205-33	Professional and consultant service costs (Aug 2003) as modified by DEAR 931.205-33 (Jan 2001)	
45.	FAR 31.205-34	Recruitment costs	May 1999
46.	FAR 31.205-35	Relocation costs	Oct 2005
47.	FAR 31.205-36	Rental costs	Dec 1996
48.	FAR 31.205-37	Royalties and other costs for use of patents	Apr 1986
49.	FAR 31.205-38	Selling costs	Aug 2003
50.	FAR 31.205-39	Service and warranty costs	Apr 1986
51.	FAR 31.205-40	Special tooling and special test equipment costs	Apr 1986
52.	FAR 31.205-41	Taxes	Mar 1996
53.	FAR 31.205-42	Termination costs	Oct 1997
54.	FAR 31.205-43	Trade, business, technical, and professional activity costs.....	Oct 1995
55.	FAR 31.205-44	Training and education costs	Oct 2005
56.	FAR 31.205-45	[Reserved]	
57.	FAR 31.205-46	Travel costs	Oct 2003
58.	FAR 31.205-47	Costs related to legal and other proceedings	Jul 2002
59.	FAR 31.205-48	Research and development costs	Jun 2003
60.	FAR 31.205-49	Goodwill	Oct 1984
61.	FAR 31.205-50	[Reserved]	
62.	FAR 31.205-51	Cost of alcoholic beverages	Apr 1986
63.	FAR 31.205-52	Asset valuations resulting from business combinations	Apr 1998

H.4 SAFETY AND HEALTH

In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes.

With respect to the performance of any portion of the work under this contract which is performed at a DOE-owned or controlled site, the Contractor agrees to comply with all state and federal ES&H regulations, and with all other ES&H requirements of the operator of such site. The Contractor also agrees to comply with the ES&H reporting requirements indicated on DOE F 1332.1, Reporting Requirements Checklist, as well as with any other ES&H reporting requirements the Contracting Officer may from time to time require.

In the event that the Contractor fails to comply with any ES&H requirement, the Contracting Officer may, without prejudice to any other DOE legal or contractual rights, issue an order stopping all or any part of such work. Thereafter, a start order for resumption of work may be issued at the discretion of the Contracting Officer. The Contractor shall make no claims for an extension of time or for compensation or damages by reason of or in connection with such work stoppage of any tier.

The contractor shall apply this provision to its subcontractors of any tier.

H.5 OPTION TO EXTEND SERVICES

- (a) The Government has the unilateral option for four (4) one-year extensions covering the continued performance of the work set forth in the Statement of Work as provided in Part I, Section C.1 – Statement of Work.
- (b) The estimated cost, base fee, award fee, and estimated level of effort which may be added to this contract pursuant to paragraph (a) above for the performance of the work under this contract for each one-year option period is as follows:

OPTION PERIODS

OPTION PERIOD 1: August 1, 2007 through July 31, 2008

<u>Estimated Cost</u>	<u>Base Fee</u>	<u>Award Fee</u>	<u>No. of Direct Productive Labor Hours</u>
\$ <u> * </u>	\$ <u> * </u>	\$ <u> * </u>	47,840

OPTION PERIOD 2: August 1, 2008 through July 31, 2009

<u>Estimated Cost</u>	<u>Base Fee</u>	<u>Award Fee</u>	<u>No. of Direct Productive Labor Hours</u>
\$ <u> * </u>	\$ <u> * </u>	\$ <u> * </u>	47,840

***To Be Definitized**

OPTION PERIOD 3: August 1, 2009 through July 31, 2010

<u>Estimated Cost</u>	<u>Base Fee</u>	<u>Award Fee</u>	<u>No. of Direct Productive Labor Hours</u>
\$ <u> * </u>	\$ <u> * </u>	\$ <u> * </u>	47,480

OPTION PERIOD 4: August 1, 2010 through July 31, 2011

<u>Estimated Cost</u>	<u>Base Fee</u>	<u>Award Fee</u>	<u>No. of Direct Productive Labor Hours</u>
\$ <u> * </u>	\$ <u> * </u>	\$ <u> * </u>	47,480

The four (4) one-year extensions can be exercised for the increase in the estimated level of effort, base fee, and award fee specified above. Should the level of effort specified or estimate of cost for the base period be exhausted before the expiration of the base period of performance, the option period may be exercised and the cumulative level of effort for the extended period will be available to allow performance based upon the merger of the labor-hours for the base and option periods. The option's labor-hours, estimated cost, and base and award fee will be merged and cumulated for any extended period with those of the base period so that at the end of such period, as extended by the option (if exercised), the contract period will be one (1) year and the estimated cost, base fee, award fee, level of effort, and obligated amount will be the total of that for the base period, plus the option period, and not segregated into discrete periods and amounts therefore.

The Contractor agrees to perform each additional one-year option period which is exercised, provided, that the Contracting Officer shall, at least 60 days prior to the expiration of the current contract period of performance of this contract give written preliminary notice of intention to exercise the option, and exercises the option prior to the expiration of the period of performance of this contract. The preliminary notice shall preserve the Government's prerogative to exercise the option, but shall not be deemed to commit the Government to the exercise of the option.

In addition, the Government may require continued performance of any services beyond the original contract period under the terms and conditions of this contract. This option to require continued performance of services may be exercised more than once, but the total extension of performance hereunder shall not exceed six months. The Contracting Officer may exercise this option by written notice to the contractor 30 days before the expiration of the contract term.

*** To Be Definitized**

H.6 TASK ORDERING

- (a) Any services to be furnished under this contract shall be ordered by issuance of Task Orders by the individual designated in Section G.2 (c). Such Orders are issued on an informal basis and not formally listed or recognized in this contract document. Task Orders must be issued in writing.
- (b) All Task Orders are subject to the terms and conditions of this contract. In the event of conflict between a Task Order and this contract, the contract shall control.

H.7 PAYMENT FOR OVERTIME PREMIUMS

For purposes of this contract, overtime premiums are not authorized.

H.8 BASE AND AWARD FEE

(a) Definitions

- (i) Base Fee - The amount set forth in Section B.2 (b) ^(a) as base fee, exclusive of any overruns.
- (ii) Award Fee Pool - An amount set forth in B.2 (b) ^(a) as award fee, exclusive of any overruns.
- (iii) Fee Determination Official (FDO) - The DOE Contracting Officer.

(b) Payment of Base and Award Fee

- (i) Base Fee - Upon the submission of a public voucher or invoice, the Government will make payment of the base fee in periodic installments (but not more frequently than bi-weekly) in amounts proportionate to the Direct Productive Labor Hours (DPLH) expended during each billing period.
- (ii) Award Fee - Following the determination by the Contracting Officer as set forth below, the Government will, on an annual basis, promptly make payment of any fee above the base fee upon the submission of a public voucher or invoice in the amount of the total award fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

(c) Determination of Award Fee Earned

- (i) The Government shall at the conclusion of each annual evaluation period specified in paragraph (ii) below provide an overall adjectival rating of the contractor's performance and make a determination of award fee earned. The DOE Technical Managers will make a recommendation to the Contracting Officer on an annual basis in accordance with the schedule in paragraph c(ii).

This individual will recommend whether any fee in addition to the base fee shall be paid the contractor.

- (ii) The available award fee shall be allocated as determined by the Contracting Officer to performance periods on an annual basis as follows:
 - Period No. 1 - August 1, 2006 through July 31, 2007
 - Period No. 2 - August 1, 2007 through July 31, 2008
 - Period No. 3 - August 1, 2008 through July 31, 2009
 - Period No. 4 - August 1, 2009 through July 31, 2010
 - Period No. 5 - August 1, 2010 through July 31, 2011
- (iii) It is agreed that the evaluation of contractor performance shall be conducted in accordance with paragraph (d) below, and that the contractor shall be promptly advised, in writing, of the determination. It is further agreed that the contractor will submit a self-evaluation of performance for each period under consideration. Said self-evaluation shall follow the same format prescribed in paragraph (e) below. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated, will be given such consideration as the FDO shall find appropriate.
- (iv) Any unearned award fee from each evaluation period shall not be eligible to be earned in any future period(s).
- (v) The contractor agrees that the determination as to the amount of award fee earned will be made by the Government Contracting Officer and such determination concerning the amount of award fee earned is binding on both parties. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(d) Performance Evaluation

- (i) The Contractor performance evaluation criteria upon which the determination of award fee earned shall be based, has been unilaterally established by the Government and are set forth in paragraph (e) below.
- (ii) The performance evaluation criteria may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor 90 calendar days prior to the start of the evaluation period to which the change will apply.

(e) Criteria for Measurement and Evaluation of Performance as Basis for Award Fee Determination

The contractor(s) will receive an overall adjectival rating on its performance of the Statement of Work (Section J.1). In evaluating the contractor(s) performance, the following factors set forth below are of equal importance and will be considered in accordance with Section H.9:

- (i) **EFFICIENCY** – Has the contractor used personnel, facilities, and equipment in an economic and effective manner? Were an appropriate number and mix of people consistently assigned to each area of effort? Was the work scheduled so that it was completed on time without impacting other efforts.
- (ii) **RESPONSIVENESS** - Did the contractor respond promptly and positively to DOE requirements? Did the contractor demonstrate initiative in identifying and solving problems? Was the work effort completed on schedule and the milestones realized on time?
- (iii) **QUALITY** - Were the final solutions to problems correct and, where possible, were the solutions optimal? What was the overall level of quality achieved by the contractor? Were contractor reports and documentation of high quality?
- (iv) **BUSINESS MANAGEMENT** - Have the required services been completed at a cost consistent with the approved estimate of cost? Did the contractor comply with internal and external procedures and regulations? Is performance consistent with the terms of the contract?

H.9 *AWARD FEE MEASUREMENT CHART

Criteria for Measurement and Evaluation
of Performance as Basis for Award Fee Determinations

Adjectival Rating	Definition	Percentage of Award Fee Pool Earned
Outstanding	Performance substantially exceeds expected levels of performance. Numerous significant* or notable** achievements exist. No significant or notable deficiencies exist.	100%
Good	Performance exceeds expected levels and some significant or notable achievements exist. Although some notable deficiencies may exist, no significant deficiencies exist.	75%
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and "good practices" are evident in contract operations. Notable achievements or notable deficiencies may or may not exist.	50%
Marginal or Lower	Performance is less than expected. No significant or notable achievements exist; however, some notable deficiencies exist. Or some significant or notable achievements exist which are more than offset by significant or notable deficiencies. Performance at this level in any area will result in a decision by the Contracting Official to withhold all award fee for the period.	0%

* Significant: This term signifies a major event or sustained level of performance which, due to its importance, has a substantial impact on the Contractor's ability to carry out its mission.

** Notable: This term signifies an event or sustained level of performance which is of lesser importance than a "significant" event, but nonetheless deserves some recognition.

H.10 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

Representations and Certifications, dated May 15, 2006 , are hereby incorporated by reference and made a part of this contract as are all others obtained in connection with this contract or contract modification.

*** To Be Definitized**

H.11 INSURANCE REQUIREMENTS UNDER COST-REIMBURSEMENT CONTRACTS

Pursuant to the requirements of the clause of this contract "FAR 52.228-7, Insurance Liability to Third Persons, (MAR 1996)" the minimum amount of insurance coverage shall be in accordance with FAR 28.307-2, unless increased coverage is otherwise required by law or regulation.

H.12 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, FY 2006)

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

H.13 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

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

H.14 ALTERATIONS IN CONTRACT

a. The following alterations are made to (CRDC-0701) (Modified-0206) located in Appendix A, in Part II, Section I of this contract:

1. The following clauses are deleted in their entirety:
 - (i) Clause No. 20, FAR 52.216-8, Fixed Fee (MAR 1997)
 - (ii) Clause No. 35, FAR 52.225-16, Sanctioned European Union Country Services (FEB 2000)
 - (iii) Clause No. 52, FAR 52.243-6, Change Order Accounting (APR 1984)
 - (iv) Clause No. 53, FAR 52.243-7, Notification of Changes (APR 1984)
2. The following clauses are hereby added:
 - (i) Clause No. 63, FAR 52.204-7, Central Contractor Registration (OCT 2003)
 - (ii) Clause No. 64, FAR 52.204-9, Personal Identity Verification of Contractor Personnel (JAN 2006)
 - (iii) Clause No. 65, FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
 - (iv) Clause No. 66, FAR 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004)

- b. The following change is made to SBNP-498 located in Appendix B, Part II, Section I this contract: FAR 52.227-14, Rights in Data – Special Works (Jun 1987) attached at the end of Appendix B as pages 21 and 22 is substituted for Clause 03, FAR 52.227-14, Rights in Data – General as modified by DEAR 927.409 (Effective Apr 1998).

H.15 GOVERNMENT-FURNISHED PROPERTY

Pursuant to the clause entitled DEAR 952.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (MAY 2004), as modified by DEAR 952.245-5, included in Part II, Section I, Appendix A, the following item(s) shall be furnished to the Contractor for performance of work hereunder:

An adequate amount of office space, office furniture (including typewriters, word processing machines, and reproduction/copy machines or services) and telephone services will be provided for contractor's use.

H.16 SECTION 8 (a) DIRECT AWARDS

- (a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Energy (DOE). Although SBA is not identified in Section A (Standard Form 26), SBA remains the prime contractor for this contract. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office for the 8(a) contractor is:

U.S. Small Business Administration
301 NW 6th Street, Suite 116
Oklahoma City, Oklahoma 73102

- (b) DOE is responsible for administering the contract and taking any action on behalf of The Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.
- (c) The contractor agrees:
- (1) To notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U. S. C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.

- (2) To adhere to the requirements of 52.219-14, Limitations on Subcontracting.

H.17 ACCESS TO DOE-OWNED OR LEASED FACILITIES

- (a) The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee's obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:
- (1) is, or is suspected of being, a terrorist;
 - (2) is the subject of an outstanding warrant;
 - (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
 - (4) has presented false or forged identity source documents;
 - (5) has been barred from Federal employment;
 - (6) is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
 - (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.
- (b) The Contractor shall assure:
- (1) In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.
 - (2) In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE-owned or leased facilities and (ii) provides additional information requested by those DOE officials.

- (c) The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.

- (d) The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Contractor's employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.

- (e) The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE-owned or leased facilities."

H.18 SECURITY CLEARANCE

The Contracting Officer shall coordinate necessary security clearances for those contractor personnel where it is required.

PART II

SECTION I

CONTRACT CLAUSES

The contract clauses attached and hereby made a part of this contract consist of the following:

- APPENDIX A DOE Chicago Operations Office, General Provisions for Cost-Type Contracts, Coded CRDC-0701 (Modified on 0206), consisting of 5 pages.
- APPENDIX B Intellectual Property Provisions – Research, Development, or Demonstration Domestic Small Business and Nonprofit Organizations; Coded SBNP-498, consisting of 19 pages.
- APPENDIX C DOE Chicago Operations Office, Additional General Provisions, consisting of 14 pages. All other clauses are incorporated by reference.

SECTION I

APPENDIX A

DEPARTMENT OF ENERGY – CHICAGO OFFICE

GENERAL PROVISIONS
FOR
COST-TYPE CONTRACTS

FAR 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).

(End of clause)

FAR 52.244-6 Subcontracts for Commercial Items (FEB 2006)

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

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, 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 Contractor shall insert the following clauses in subcontracts for commercial items:
- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (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, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).
 - (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 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.

(End of clause)

DEAR 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 this order in effect at the time of award.

(End of Clause)

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 these addresses:

FAR clauses: <http://www.arnet.gov/far>
 DEAR clauses: <http://www.pr.doe.gov/dear.html>

(End of Clause)

FAR 52.252-6 Authorized Deviations in Clauses (APR 1984)

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

(End of clause)

The following clauses are hereby incorporated by reference:

Clause

No.	Reference	Title of Clause
1.	FAR 52.202-1	Definitions (JUL 2004) as modified by DEAR 952.202-1 (MAR 2002)
2.	FAR 52.203-3	Gratuities (APR 1984)
3.	FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)
4.	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995)

<u>Clause No.</u>	<u>Reference</u>	<u>Title of Clause</u>
5.	FAR 52.203-7-	Anti-Kickback Procedures (JUL 1995)
6.	FAR 52.203-8.	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
7.	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
8.	FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (SEPT 2005)
9.	FAR 52.204-4	Printing/Copying Double-Sided on Recycled Paper (AUG 2000)
10.	DEAR 952.208-70	Printing (APR 1984)
11.	FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005)
12.	FAR 52.215-2	Audit and Records - Negotiation (JUN 1999)
13.	FAR 52.215-8	Order of Precedence - Uniform Contract Format (OCT 1997)
14.	FAR 52.215-10	Price Reduction for Defective Cost or Pricing Data (OCT 1997)
15.	FAR 52.215-12	Subcontractor Cost or Pricing Data (OCT 1997)
16.	FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2004)
17.	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)
18.	FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997)
19.	FAR 52.216-7	Allowable Cost and Payment (DEC 2002) as modified by DEAR 952.216-7 Alternate II
20.	FAR 52.219-8	Utilization of Small Business Concerns (MAY 2004)
21.	FAR 52.222-1	Notice to the Government of Labor Disputes-(FEB 1997)
22.	FAR 52.222-2	Payment for Overtime Premiums (JUL 1990) <i>Reference paragraph (a). Insert "zero".</i>
23.	FAR 52.222-3	Convict Labor (JUN 2003)
24.	FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)
25.	FAR 52.222-26	Equal Opportunity (APR 2002)
26.	FAR 52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (DEC 2001)
27.	FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
28.	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
29.	FAR 52.223-6	Drug-Free Workplace (MAY 2001)
30.	FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)
31.	DEAR 952.224-70	Paperwork Reduction Act (APR 1994)
32.	FAR 52.225-1	Buy American Act - Balance of Payments Program - Supplies (JUN 2003)
33.	FAR 52.225-13	Restrictions on Certain Foreign Purchases (FEB 2006)

<u>Clause No.</u>	<u>Reference</u>	<u>Title of Clause</u>
34.	FAR 52.225-16	Reserved
35.	FAR 52.228-7	Insurance - Liability to Third Persons (MAR 1996)
36.	FAR 52.232-17	Interest (JUN 1996)
37.	FAR 52.232-20	Limitation of Cost (APR 1984)
38.	FAR 52.232-22	Limitation of Funds (APR 1984)
39.	FAR 52.232-23	Assignment of Claims (JAN 1986)
40.	FAR 52.232-25	Prompt Payment (OCT 2003)
41.	FAR 52.232-33	Payment by Electronic Funds Transfer- Central Contractor Registration (OCT 2003) <i>Reference paragraph (b)(1): Insert "no later than 15 days prior to submission of the first request for payment"</i>
42.	FAR 52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information (MAY 1999) <i>Reference paragraph (c). Insert the following information:</i> <i>Name: U.S. Department of Energy</i> <i>Chicago Office</i> <i>Mailing Address: 9800 S. Cass Avenue</i> <i>Argonne, Illinois 60439</i> <i>Telephone Number: 630/252-2351</i> <i>Person to Contact: Paulette Hubbard</i> <i>Electronic Address: paulette.hubbard@ch.doe.gov</i>
43.	FAR 52.233-1	Disputes (JUL 2002) Alternate I (DEC 1991)
44.	FAR 52.233-3	Protest After Award (AUG 1996) Alternate I (JUN 1985)
45.	DEAR 952.215-70	Key Personnel (DEC 2000)
46.	FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)
47.	FAR 52.242-3	Penalties for Unallowable Costs (MAY 2001)
48.	FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)
49.	FAR 52.242-13	Bankruptcy (JUL 1995)
50.	FAR 52.243-2	Changes-Cost-Reimbursement (AUG 1987) Alternate I (APR 1984)
51.	FAR 52.243-6	Change Order Accounting (APR 1984)
52.	FAR 52.243-7	Notification of Changes (APR 1984)
53.	FAR 52.244-2	Subcontracts (AUG 1998) Alternate I (JAN 2006)
54.	FAR 52.244-5	Competition in Subcontracting (DEC 1996)
55.	FAR 52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (MAY 2004) as modified by DEAR 952.245-5
56.	FAR 52.247-63	Preference for U.S.-Flag Air Carriers (JUN 2003)
57.	FAR 52.247-64	Preference for Privately Owned U.S.- Flag Commercial Vessels (FEB 2006)
58.	FAR 52.249-6	Termination (Cost-Reimbursement) (MAY 2004)
59.	FAR 52.249-14	Excusable Delays (APR 1984)
60.	DEAR 952.251-70	Contractor Employee Travel Discounts (DEC.2000)
61.	FAR 52.253-1	Computer Generated Forms (JAN 1991)

SECTION I

APPENDIX B

**Intellectual Property Provisions
Research, Development, or Demonstration
Domestic Small Business and Nonprofit Organizations**

01. FAR 52.227-1 Authorization and Consent (JUL 1995), Alternate I
02. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
This clause is not applicable if the award is for less than \$100,000.
03. FAR 52.227-16 Additional Data Requirements (JUN 1987)
04. FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)
05. DEAR 952.227-9 Refund of Royalties (MAR 1995)
06. DEAR 952.227-11 Patent Rights – Retention by Contractor (Short Form) (MAR 1995)
07. DEAR 970.5227-1 Rights in Data – Facilities (DEC 2000)

Attachment 1 (for reference only): Patent Rights – Acquisition by the Government (MAR 1995); DEAR 952.227-13

01. FAR 52.227-1 Authorization and Consent; Alternate I

AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) 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.

(End of clause)

02. FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

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.

(End of clause)

03. FAR 52.227-16 Additional Data Requirements

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.

(End of clause)

04. FAR 52.227-23 Rights to Proposal Data

RIGHTS TO PROPOSAL DATA (TECHNICAL)(JUN 1987)

Except for data contained on pages _____, 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 _____, upon which this contract is based.

05. DEAR 952.227-9 Refund of Royalties

REFUND OF ROYALTIES (MAR 1995)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

06. DEAR 952.227-11 Patent Rights - Retention by the Contractor (short form)

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 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.

(End of clause)

07. DEAR 970.5227.1 Rights in Data - Facilities

Rights in data-facilities. (DEC 2000)

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

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of

paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material. (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. ----- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. ----- . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. ---- with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (DEC 2000). As prescribed in 48 CFR 970.2704-3(a), where access to Category C-24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase "and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology" after "laser isotope separation" and before the comma in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5227-1, Rights in Data-Facilities, as appropriate.

(End of Clause)

Attachment 1: DEAR 952.227-13 Patent Rights - Acquisition by the Government

PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT (MAR 1995)

(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 subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying 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.

(l) 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.

(End of clause)

SECTION I

APPENDIX C

DEPARTMENT OF ENERGY-CHICAGO OPERATIONS OFFICE

ADDITIONAL GENERAL PROVISIONS
FOR
COST-TYPE CONTRACTS

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Clause 1. DEAR 952.203-70 -- Whistleblower Protection for Contractor Employees (DEC 2000)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of Clause)

Clause 2. 952.204-2 Security (SEP 1997)

- (a) As prescribed in 904.404(d)(1), the following clause shall be included in contracts entered into a) *Responsibility*. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) *Regulations*. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) *Definition of classified information*. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data*. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data

declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

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

**Clause 3. DEAR 952.209-72 Organizational Conflicts of Interest-
Alternate I (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 (Contracting Officer see DEAR 9.507-2 and enter specific term) 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.

(End of clause)

Alternate I

- (f) Subcontracts.
 - (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.
 - (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

(End of alternate)

Clause 4. 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.

(End of Clause)

Clause 5. 52.219-6 Notice of Total Small Business Set-Aside (JUNE 2003)

- (a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is. independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.
- (b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected. (2) Any award resulting from this solicitation will- be made to 'a small business concern.
- (c) *Agreement.* A small business. concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business, concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures. and the total amount of this contract does not exceed. \$25,000, a small business concern may furnish the product. of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Clause 6. 52.219-14 Limitations on Subcontracting (DEC 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for-
 - (1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

- (3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

Clause 7. 52.222-38 Compliance with Veterans' Employment Reporting Requirements (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of clause)

Clause 8. 52.222-50 Combating Trafficking in Persons (APR 2006)

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

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person. “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract, including all direct

cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means a Contractor that has no more than one employee including the Contractor.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding Contractors and Contractor employees that engage in or support severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor. During the performance of this contract, the Contractor shall ensure that its employees do not violate this policy.

(c) *Contractor requirements.* The Contractor, if other than an individual, shall establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor in the performance of this contract. At a minimum, the Contractor shall—

- (1) Publish a statement notifying its employees of the United States Government's zero tolerance policy described in paragraph (b) of this clause and specifying the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;
 - (2) Establish an awareness program to inform employees about—
 - (i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;
 - (ii) The actions that will be taken against employees for violation of such policy;
 - (iii) Regulations applying to conduct if performance of the contract is outside the U.S., including—
 - (A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor; and
 - (B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor which may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261-3267), and 18 U.S.C 3271, Trafficking in Persons Offenses Committed by Persons Employed by or Accompanying the Federal Government Outside the United States;
 - (3) Provide all employees directly engaged in performance of the contract with a copy of the statement required by paragraph (c)(1) of this clause and obtain written agreement from the employee that the employee shall abide by the terms of the statement; and
 - (4) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) **Notification.** The Contractor shall inform the contracting officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a contract employee has engaged in conduct that violates this policy; and
 - (2) Any actions taken against employees pursuant to this clause.
- (e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c) or (d) of this clause may render the Contractor subject to—
- (1) Required removal of a Contractor employee or employees from the performance of the contract;
 - (2) Required subcontractor termination;
 - (3) Suspension of contract payments;
 - (4) Loss of award fee for the performance period in which the Government determined Contractor non-compliance;
 - (5) Termination of the contract for default, in accordance with the termination clause of this contract; or
 - (6) Suspension or debarment.
- (f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts for the acquisition of services.

CLAUSE 9. FAR 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.

(End of clause)

Clause 10. 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).

(End of clause)

Clause 11. DEAR 952.226-74 Displaced Employee Hiring Preference (JUNE 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.

(End of Clause)

Clause 12. 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.

(End of clause)

Clause 13. 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 onsite 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.

(End of clause)

Clause 14. FAR 52.252-4 Alterations in Contract (APR 1984)

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

See -Section H -14 - Alterations In Contract on Page H-13

(End of clause)

PART III
SECTION J

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

LIST OF ATTACHMENTS

1. Statement of Work (with attachments 1 and 2)
2. DOE F 1332.1 - Reporting Requirements Checklist (with attachments 1 and 2)
3. Billing Instructions

PART III

SECTION J

1. STATEMENT OF WORK

**STATEMENT OF WORK FOR
INFORMATION TECHNOLOGY SERVICES TO SUPPORT THE
U. S. DEPARTMENT OF ENERGY
OFFICE OF SCIENCE
CHICAGO OFFICE**

1.0 INTRODUCTION

The Department of Energy (DOE), Office of Science, Chicago Office (SC-CH) is acquiring Information Technology (IT) Services to support the SC-CH Divisions/Offices located primarily in Building 201 at the Argonne National Laboratory (ANL) site, Argonne, Illinois. In addition, satellite operations shall require the Contractor to provide IT support services at the following SC-CH and DOE-SC locations:

SC-CH

New Brunswick Laboratory (NBL); Argonne, IL

DOE-SC

Fermi Site Office; Batavia, IL

Argonne Site Office, Argonne, IL

Ames Site Office, Argonne, IL

Stanford Site Office; Stanford University Campus, CA

Lawrence Berkley Site Office; Berkley Campus, CA

The Contractor may also be required to provide support to other SC-CH and DOE-SC entities not located at the above sites.

2.0 BACKGROUND

The IT services are required to support SC-CH's vision, mission and business units. In addition, CH provides IT support to SC Laboratory Site Office in its role as a component of the SC Integrated Support Center. The Chicago Office has a workforce of over 240 employees, and SC Laboratory Site Office locations currently provided with IT services have a total workforce of over 75 employees.

The SC-CH employees provide integrated business, technical and administrative services in the following business areas:

- Corporate Management Services – cradle-to-grave management of acquisition and assistance instruments; financial services; general and intellectual property legal services; and technical, infrastructure, analytical, human resources, information management and administrative services.

- Measurement Science – performance based management of NBL, a Government Owned and Government Operated Facility that is part of SC-CH. Government scientists at this facility specialize in nuclear standards measurement and nuclear treaty/non-proliferation monitoring.
- Program Management – management of various DOE programs and projects.
- Facility Management - participation in performance-based management of the projects, property, physical plant and operations of Government-Owned, Contractor-Operated Laboratories. CH provides technical and management support to Site Offices overseeing eight of the ten SC national laboratories

The comprehensive SC-CH business-computing environment requires an IT Support Services contractor to operate and monitor the current systems, as well as plan and implement new systems and upgrades to support changing business requirements.

An aggressive modernization effort has recently completed establishing a robust, flexible, reliable, user-friendly computing infrastructure. This effort focused on improving the desktop (**see Attachment 1**), office automation, wide area network, and communications. The Novell Netware Network Operating System supports standard desktop configurations for processing in a Windows XP desktop operating system environment. Windows 2003 servers are used for special purpose servers. Cisco Routers and Firewall are used for Internet, Intranet, wide area network (WAN), DOE wide and other communications services. A standard suite of office automation software has been implemented which supports word processing, spreadsheet, presentation, database management, internet access, and e-mail functionality. There are currently 50 SC-CH supported information systems that are available to SC-CH employees via the SC-CH WAN.

The SC-CH technical architecture is targeted to be modeled as an open system environment based on DOE-adopted standards and, in the absence of DOE-adopted standards, industry standards that will allow operation of a heterogeneous, multi-vendor network of hardware, software, and communication platforms supporting interoperability, scalability and portability of applications.

As efforts continue to stabilize the infrastructure, SC-CH has focused on continuing improvements to network security. Another priority is the establishment of a corporate strategy for the development and implementation of corporate information systems. This strategy shall embrace Departmental information management strategic goals and shall be based on the Departmental Enterprise Architecture Programs.

The objective of this effort is to acquire information technology support services for SC-CH in the following areas:

- **Information Management Strategic Planning**
- **Information Systems Development**
- **Systems Engineering Infrastructure Upgrades and Improvements**
- **Systems Integration and Configuration Management**
- **Desktop/WAN Production (Operations, Help Desk, Maintenance)**
- **Cyber Security Upgrades based on Risk Management Processes**
- **Support the SC Enterprise Architecture Development Process**

4.0 APPLICABLE DOCUMENTS

The Contractor shall adhere to the following documents and any new applicable 200 and 400 series DOE directives, National Institute of Standards and Technology (NIST) publications (specifically the SP 800 series), and Federal Information Processing Standards Publications (FIPS) that are issued during the solicitation and contract periods:

Document Type	No.	Title, Date
DOE Order	200.1	Information Management Program, 9/30/96
DOE Manual	200.1-1	Telecommunications Security Manual, 3/1/97
DOE Guide	200.1-1	Software Engineering Methodology, 5/21/97
DOE Notice	203.1	Software Quality Assurance, 10/2/00
DOE Policy	205.1	Departmental Cyber Security Management Policy, 5/8/01
DOE Order	205.1	Unclassified Cyber Security Program, 7/26/99
DOE Manual	205.1-1	Incident Prevention, Warning, and Response (IPWAR) Manual, 9/30/04
DOE Guide	205.1-1	Cyber Security Architecture Guidelines, 3/8/01
DOE Manual	205.1-2	Clearing, Sanitization, and Destruction of Information System Storage Media, Memory Devices, and Related Hardware Manual, 3/8/01
DOE Notice	205.2	Foreign National Access to DOE Cyber Systems, 2/19/04
DOE Guide	205.2-1	Guide to Preventing Computer Software Piracy, 7/12/01
DOE Notice	205.3	Password Generation, Protection, and Use, 11/1/04
DOE Guide	205.3-1	Password Guide, 11/23/99
DOE Notice	205.8	Cyber Security Requirements for Wireless Devices and Information Systems, 2/11/04
DOE Notice	205.9	Certification and Accreditation Process for Information Systems Including National Security Systems, 2/19/04
DOE Notice	205.10	Cyber Security Requirements for Risk Management, 2/19/04
DOE Notice	205.11	Security Requirements for Remote Access to DOE

		and Applicable Contractor Information Technology Systems, 2/19/04
DOE Notice	206.3	Personal Identity Verification, 11/22/05
DOE Order	470-4	Safeguards and Security Program, 8/26/05
DOE Manual	470.4-4	Information Security, 8/26/05
DOE Manual	471.2-2	Classified Information Security Manual, 8/3/99
DOE Order	471.3	Identifying and Protecting Official Use Only Information, 4/9/03
DOE Manual	471.3-1	Manual for Identifying and Protecting Official Use Only Information, 4/9/03
DOE Guide	471.3-1	Guide to Identifying Official Use Only Information, 4/9/2003

The above documents are available at: <http://www.directives.doe.gov/>

NIST SP	800-18	Guide for Developing Security Plans
NIST SP	800-26	Cyber Security Self Assessment Guide
NIST SP	800-30	Risk Management Guide for IT Systems
NIST SP	800-34	Contingency Planning Guide for Information Technology Systems
NIST SP	800-37	Risk Management Guide for IT Systems
NIST SP	800-40	Procedures for Handling Security Patches
NIST SP	800-47	Security Guide for Interconnecting Information Systems
NIST SP	800-50	Building an Information Technology Security Awareness and Training Program
NIST SP	800-53	Cyber Security Self Assessment Guide
NIST SP	800-59	Guideline for Identifying an Information System as a National Security System
NIST SP	800-60	Guide for Mapping Information and Information Types to Security Objectives and Risk Levels
NIST SP	800-61	Computer Security Incident Handling Guide
NIST SP	800-64	Security Considerations in the Information System Development Life Cycle
NIST SP	800-65	Integrating Security into the Capital Planning and Investment Control Process

The above documents are available at: <http://csrc.nist.gov/publications/nistpubs/index.html>

FIPS	199	Standards for Security Categorization of Federal Information and Information Systems
FIPS	201	Personal Identity Verification for Federal Employees and Contractors

The above documents are available at: <http://csrc.nist.gov/publications/fips/index.html>

In addition, the Contractor shall adhere to:

Public Law 93-579, The Privacy Act of 1974
Public Law 90-23, Computer Fraud and Abuse Act of 1986
Public Law 107-347, Federal Information Security Management Act of 2002
OMB Circular A-130, Management of Federal Information Resources
Paperwork Reduction Act of 1980 (reauthorized 1986, 1995)
Computer Security Act of 1987
Computer Matching and Privacy Act of 1988
Information Technology Management Reform Act of 1996
36 CFR, Chapter XII, Part 1234, Electronic Records Management

Also, the Contractor shall adhere to the SC-CH Cyber Security Protection Plan, which will be provided, upon award, to the Contractor.

5.0 TECHNICAL REQUIREMENTS

The Contractor's effort awarded under this SOW must provide SC-CH Information Technology support during all days of Government operation. SC-CH expects that the Contractor will monitor and manage vacation and sick leave of personnel supporting this effort and ensure that technical work areas have personnel present (80% of total staff at all times). SC-CH expects a continuous high quality of support services for the operation of its information systems.

The Contractor shall provide the technical effort in the work areas listed below. Some of the major work areas are sub-divided to provide more specific work descriptions. Included in the descriptions are outputs and associated performance standards. If the work generates data, the title of the data is in parenthesis at the end of the paragraph. See the DOE Reporting Requirements Checklist (DOE F 1332.1 #4.F.Other). The performance standards are reiterated in more detail in **Attachment 2**.

5.1 Information Management Strategic Planning. The contractor shall assist with the development of strategic plans and adhere to the SC-CH Information Architecture standards. The contractor shall research, evaluate, and recommend hardware and software solutions and upgrades that will result in adherence to the SC-CH Information Architecture. (Hardware/Software Evaluations, Plans for Information Architecture Compliance.

5.2 Capability Maturity Model Integration (CMMI). The Capability Maturity Model Integration (CMMI) project has involved a large number of people from different organizations throughout the world. These organizations were using a CMM or multiple CMMs and were interested in the benefits of developing an integration framework to aid in enterprise-wide process improvement

5.2.1 The contractor shall build a CMM that will benefit CH concentrating on the performance aspects of the business.

5.3 Information Systems Development. The contractor shall develop Information Systems (IS) that implement the functionality specified by the Strategic and Operating Plans. The following services are required:

- 5.3.1 Provide Project Management. The contractor shall manage the development and implementation of information systems. Information systems and documentation will be completed on time. (Management Plans and New Information Systems)
- 5.3.2 Use Software Engineering Methodology. The contractor shall apply the DOE Systems Engineering Methodology for the development of SC-CH information systems in accordance with the SC-CH IT Strategic and Operational Plans, the SC-CH Information Architecture, Departmental information management strategic goals, and SC-CH strategic business goals.
- 5.3.3 Document Systems. The contractor shall develop accurate system documentation in accordance with guidance, document samples and project models that are provided at the following web site - <http://cio.doe.gov/ITReform/sqse/index.html>. (System Documentation)
- 5.3.4 Develop Intranet/Internet Systems. The Contractor shall establish the technical environment and managerial processes to support applications using the web as a primary user interface. This support service shall involve development of World Wide Web (WWW) functionality including programming in an Internet-aware language, such as Java and XML; and providing on-line forms and other interactive processes to facilitate data access. (Web-based Systems)

5.4 Systems Engineering Infrastructure Upgrades and Improvements. The contractor shall implement the technology infrastructure required to support information systems development projects in accordance with the following:

- 5.4.1 Engineer Technology Projects. The contractor shall analyze, design, plan, execute, and document technology infrastructure upgrades and improvements to support the SC-CH information systems. Projects and documentation will be completed on time and executed according to the project plan. (Network Infrastructure Diagrams and Documentation, Management Plans)
- 5.4.2 Provide Unclassified Cyber Security. The Contractor shall comply with the provisions of DOE directives regarding "Unclassified Cyber Security Program" and must also ensure that the appropriate security controls are implemented, documented, tested and monitored. No or few findings result from annual cyber security risk assessments. The

Contractor shall maintain a Cyber Security Program Plan (CSPP) based upon the program office Program Cyber Security Plan (PCSP). Maintain the current Risk Management Program to ensure that Cyber Security is in place and all vulnerabilities are mitigated in a timely manner.

5.5 Systems Integration and Configuration Management. The contractor shall transition developed information systems and engineered technology solutions into production in accordance with the following paragraphs:

- 5.5.1 Integrate Information Systems and Products. The contractor shall conduct information systems and product testing and ensure quality assurance resulting in smooth integration of systems and products. Installations are timely and problem-free. (Test Plans, Documentation, and Installed Products and Systems)
- 5.5.2 Integrate COTS Software. The contractor shall coordinate the implementation of commercial applications and deployment of other DOE applications at SC-CH. (Installed Software)
- 5.5.3 Manage Configuration. The contractor shall provide accurate configuration management of the SC-CH information systems to include a repository of final-version documentation that has been reviewed as part of the pre-productions analysis function; an inventory of SC-CH information systems, change/version control, and system retirement. (Configuration Management Documentation)
- 5.5.4 Maintain Information Systems. The contractor shall provide programming support to existing SC-CH information systems – changes to systems range from redesigning the system to accommodate changing technology, to making modifications to support changing user requirements, to correcting existing errors. The contractor shall accurately revise system documentation as part of the process in accordance with DOE documentation standards. (Revised Systems and Updated Documentation)
- 5.5.5 Train Users and Rollout Systems/Products. The contractor shall provide appropriate training and rollout coordination to users of new information systems and for all commercial off the shelf (COTS) packages. (Training Manuals and Instructions, Rollout Plans and Schedules)
- 5.5.6 Administer Databases. The contractor shall provide timely and accurate database administration of DOE-CH information in accordance with the DOE-CH Operational Plan and Technical

Architecture Specifications. The Database administrator shall not be a programmer. (Revised Databases and Documentation)

5.6 Desktop/WAN Production (Operations, Help Desk, Maintenance). The contractor shall provide an operational production environment for the SC-CH information systems via a Help Desk/Customer Support Center (CSC). The Help Desk/CSC hours of operation are 7:00 a.m. to 6:30 p.m. Monday through Friday, excluding Federal holidays. The Help Desk/CSC shall be a problem resolution center that serves as the primary interface for users to request support for desktop and network computer hardware, software and telecommunications. It shall be made up of network operations and Help Desk components. Network operations shall support and maintain the SC-CH WAN infrastructure and work closely with Help Desk/CSC to ensure an effective and efficient information technology environment. The Contractor shall provide immediate response to operational and security failures 24 hours per day, 7 days per week to ensure the continuous operation and security of the WAN. These services will be provided in accordance with the following paragraphs:

- 5.6.1 Operate a Help Desk. The contractor shall provide call management, problem identification and resolution by using the HEAT system, an automated process for managing and responding to user requests. The process will include call recording, tracking, escalation (as necessary), reporting, responding to users questions/problems/requests for assistance/problem reporting, and conducting follow-up customer surveys. Customer satisfaction levels will average between 3 and 3.9 on a 5-point scale. (Customer Survey Results)
- 5.6.2 Respond to Users. The contractor shall provide responses in accordance with the level of criticality. Response times average between: Emergency – 10 to 15 minutes; High – 30 to 60 minutes; Normal – 2 to 4 hours; Low – 4 to 8 hours. (Response Times Data)
- 5.6.3 Prepare Property. The contractor shall prepare obsolete computers, peripherals and software for disposal as required in conformance to applicable DOE orders and notices.
- 5.6.4 Prepare Trend Reports. The contractor shall collect statistics and develop trend reports on hardware/software problems, security incidents, maintenance service calls, etc. (Trend Reports)
- 5.6.5 Maintain Hardware. The contractor shall maintain primary and peripheral hardware not under warranty and track expiration of warranties to ensure continued maintenance of the equipment. When repairs are required, the contractor shall arrange for repairs via contact with third party maintenance providers selected and compensated by DOE-CH.

- 5.6.6 Maintain Laptop Pool. The contractor shall manage and maintain a pool of laptop PCs and peripherals available for short-term use by SC-CH employees.
- 5.6.7 Maintain Training Facility. The contractor shall maintain the SC-CH computer training facility for hands-on computer training and as a disaster recovery site.
- 5.6.8 Operate WAN. The contractor shall provide technical expertise to operate, backup, monitor and maintain the Wide Area Network (WAN) that includes advanced network solutions and communications capabilities (e.g. switches, firewalls, database servers, Internet servers, Private Wide Area Network, and document imaging/management). This expertise will ensure that business systems and IT infrastructure are operational and secure 24 hours per day, 7 days per week. (Network Statistics)
- 5.6.9 Monitor Network Performance. The contractor shall analyze and assess equipment and performance degradation, including determination of hardware, software and/or other technical changes necessary as well as supply provisions to meet operational requirements. The Contractor shall provide immediate response to operational failures 24 hours per day, 7 days per week.
- 5.6.10 Maintain Cyber Security. The contractor shall implement, test and monitor network security. The Contractor shall provide immediate response to security failures 24 hours per day, 7 days per week. (Cyber Security Reports) The contractor shall recommend policy, procedures, changes and updates to the Cyber Security Program Plan (CSPP). The contractor shall assist in system self assessment and risk management. The contractor shall develop security plans for all systems and applications based upon the most current changes and risk assessment for the Director IMS's approval.
- 5.6.11 Maintain Videoconference Systems. The contractor shall operate, install, update and maintain videoconference systems.
- 5.6.12 Setup Conferences. The contractor shall schedule and setup video and audio conferences. Assistance in planning and logistics of conferences (including local, remote, teleconference, nationwide and/or global) and presentations may be required on an ad hoc basis.

6.0 DELIVERABLES

The contractor shall provide deliverables in accordance with the Reporting Requirements Checklist (DOE F 1332.1 #4.F.Other).

Commercial off the Shelf Software

Standard Desktop Image:

32 Bit ODBC drivers	MS Windows XP SP2
Adobe Acrobat Reader 7.0.3	MS Word 2003 (shared install)
CaptureEze Pro Version 8	Netscape Communicator 7.2
MS Access 2003 (shared install)	Novell Client for NT 4.91
MS Excel 2003 (shared install)	VirusScan Enterprise 8.0
MS Outlook 2003	WinZip 32 Version 8.0
MS PowerPoint 2003 (shared install)	

Custom Desktop (includes all of above plus any combinations of these):

Adobe Acrobat 7.0	Hummingbird DM5
Adobe PhotoShop 5.0/5.5	Internet Explorer 6.0
AllClear 5.0	Legal Star IP Forms
AutoCAD LT 98	Lexis Nexis
Business Objects 5	MS Access 2003
Cognos Impromptu	MS Project 2003
Corel Draw	MS Visio 2003
Corel WP 2002	MS Word 6.0
Corel WP Suite	Palm Pilot
Datachem	PeopleSoft
Front Page	Taproot
Front Page 2000	WinFax
GSView	Web Development CBT
HP Scanner Software	

Server Applications

Bindview Enterprise	Blackberry Enterprise Server 4.0
dtSearch	Heat
Intel NetPort Manager	McAfee Enterprise Console (menu,dist.,meter.)
MS Exchange 2003	MS Internet Information Server
MS Office 2003 online training	MS SQL 2000
Novell Netware 6.5	Oracle 9i
Personnet	Powerchute
Radiant One Virtual Directory Server	Sybase 12.5
Syncsort	Timesheet Professional
TN3270 Reflection for IBM	Travel Manager
Websphere Application Server 5.x	Wincompare
Windows 2003 Server	WRQ Reflection 7.0
WRQ Reflection FTP NT v.7.0	ZenWorks

Development Tools

CA Visual Objects 2.0	Delphi 4.0
Dreamweaver	Fireworks
MS Access 2003	MS Visual C++
MS Visual FoxPro	MS Visual InterDev
Websphere Device Developer	Websphere/Rational Application Developer

**Oldest and Most Recent Workstation Configurations
As of January 2006**

Minimum Workstation Configuration		Maximum Workstation Configuration	
Display 17"	Dell Color	Flat Panel Display 19"	Dell Color
Processor	1.8 GHz	Processor	3.0 GHz
Operating System	Windows XP SP2	Operating System	Windows XP SP2
Motherboard	Dell w/Intel	Motherboard	Dell Intel Pent. 4
Hard Disk Drive	40 GB	Hard Disk Drive	80 GB SATA
CD-ROM/CD-RW+DVD	17X-40X TDE	CD-RW/DVD	48X – 48X – 16X
LAN (mbit)	10/100	LAN (mbit)	10/100/1000
Level 2 Cache	512 Kb	Level 2 Cache	512 Kb
Memory (RAM)	512 Mb	Memory (RAM)	1.0 Gb
Video	8 Mb	Video	128 Mb
Imega Zip	N/A	Floppy Disk Drive	1.44 Mb
Floppy Disk Drive	1.44 MB	Audio	64 bit w/speakers
Audio	64 bit w/speakers	Mouse	Dell Optical USB Wheel Mouse
Mouse	PS/2	Keyboard	101-102 USB
Keyboard	PS/2	Power	200 Watts
Power	200 Watts	Case	Mini-tower
Case	Mini-tower		

File Server Configurations
(Separate servers for applications and data)

Application Servers:

(42) Compaq DL360/380
Xeon (512 Cache) 3.2 GHz
2 GB RAM

Email Servers/Gateways:

(5) Compaq DL360/380
Xeon (512 Cache) 3.0 GHz
1 GB RAM

Data Servers (Sybase SQL):

(6) Compaq DL360/380
Xeon (512 Cache) 3.2 GHz
MSA 1000
2 GB RAM

Internet Information Server:

(3) Compaq DL360/380
Xeon (512 Cache) 3.2 GHz
2 GB RAM

Other Network Infrastructure Components

Cisco Switches
Cisco PIX Firewall
Polycom and Pictoretel Videoconference Systems

PERFORMANCE TASK STANDARDS FOR AWARD FEE

Task	Output (Results)	Standard
Information Systems Development	New Systems and Documentation Developed on Time	<p>Meets: Each new system and corresponding documentation are completed on the last approved estimated end date</p> <p>Exceeds: Each new system and corresponding documentation are completed at least 10 days before the last approved estimated end date AND effectively utilizes web-based technologies to provide added functionality and ease of use</p>
	Accurate System Documentation	<p>Meets: Upon review, Functional Design and System Design documentation are correct, thorough, and require no modification</p> <p>Exceeds: Functional Design, System Design and additional DOE standard documentation are correct, thorough, and require no modification</p>
	Consistent Documentation	<p>Meets: Functional Design and System Design are in accordance with DOE documentation standards and require no modification</p> <p>Exceeds: Functional Design, System Design and additional DOE standard documentation are in accordance with DOE documentation standards and require no modification</p>
Systems Engineering Infrastructure Upgrades and Improvements	Upgraded/Improved and Documented Infrastructure Completed on Time	<p>Meets: Each infrastructure improvement is completed on the last approved estimated completion date</p> <p>Exceeds: Each infrastructure improvement is completed at least 10 days before the last approved estimated completion date</p>
	Plans are Executed without Unexpected Technology Changes or Purchases	<p>Meets: 90% to 99% of the original plan steps were executed according to the original project plan (unless deviations are beneficial to SC-CH)</p> <p>Exceeds: 100% of the original plan steps were executed according to the original project plan (unless deviations are beneficial to SC-CH)</p>

Task	Output (Results)	Standard
	Cyber Security Program Compliance	<p>Meets: 1 to 3 High Risk Findings and 1 to 4 Medium Risk Findings result from semiannual cyber security risk assessment</p> <p>Exceeds: No High Risk Findings and No Medium Risk Findings result from annual cyber security risk assessment</p>
Systems Integration and Configuration Management	Systems and Products Integrated on Time, with Accurate and Consistent Deliverables	<p>Meets: All deliverables are submitted on the last approved estimated completion date; are correct, thorough, and require no modification; and are in accordance with DOE and DOE-CH guidelines and procedures</p> <p>Exceeds: All deliverables are submitted at least 10 days before the last approved estimated completion date; are correct, thorough, and require no modification; and are in accordance with DOE and DOE-CH guidelines and procedures</p>
Desktop/ WAN Production	Satisfied Customers	<p>Meets: Customer satisfaction averages between 3 and 3.9 on a 5 point scale</p> <p>Exceeds: Customer satisfaction averages between 4 and 5 on a 5 point scale</p>
	Quick Response	<p>Meets: Response times average Emergency: 10-15 min. High: 30-60 min. Normal: 2-4 hours Low: 4-8 hours</p> <p>Exceeds: Emergency: < 10 min. High: < 30 min. Normal: < 2 hours Low: < 4 hours</p>
	Available Desktop Systems	<p>Meets: Desktop (PC) Systems operational 96% to 97.9% of 24 hours per day, 7 days per week (24x7)</p> <p>Exceeds: 98% or above</p>
	Available Network Communications	<p>Meets: Network Communications operational 95% to 96.9% of 24x7</p> <p>Exceeds: 97% or above</p>

Task	Output (Results)	Standard
	Available Applications	Meets: Applications operational 93% to 94.9% of 24x7 Exceeds: 95% or above
	Available Expertise	Meets: 80% to 89% of staff members on-site all government business days Exceeds: 90% or more staff members on-site all government business days

Award fee is calculated based upon a set percentage. The total award fee includes funding for extra points beyond 100%. The 100% calculation is less ^{than} the total to accommodate this methodology. Each year depending upon the amount of tasks the fee will regulate how this algorithm is developed. Example, if the Total award for any given year is \$106, 000 and the maximum award is calculated at 106%. The total award fee would be awarded. The 100% number would be \$100.000 and the extra points would provide some dollar figure up to the maximum award free Examples: 98% + \$98,000, 102% + \$102,000, etc.

PART III

SECTION J

2. DOE F 1332.1 – REPORTING REQUIREMENTS CHECKLIST

REPORT DISTRIBUTION LIST

<p>CONTRACT NO. DE-AC02-06CH11377</p>	<p>Status Report</p>	<p>Labor Plan</p>	<p>Cost Plan</p>	<p>Milestone Schedule</p>	<p>Labor Management Report</p>	<p>Cost Management Report</p>	<p>Task Proposal w/ Management Plan</p>	<p>Technical Progress Report</p>	<p>Topical Report /Help Desk Reports</p>	<p>Other - Deliverables by Task Order</p>	
<p><u>Addressees:</u></p>	<p><u>Number of Report Copies</u></p>										<p><u>Special Instructions</u></p>
<p>U.S. Department of Energy/ACQ 9800 So. Cass Avenue Argonne, IL 60439 Attn: Contracting Officer</p>	1	1	1	1	1	1	1	1	1	1	
<p>Program Manager – CH/IMS U.S. Department of Energy 9800 So. Cass Avenue Argonne, IL 60439</p>	2	2	2	2	2	2	2	2	2	2	

DOE Contractor/Subcontractor
Work-Related Fatality, Injury, and Illness Reporting

DOE is to ensure the reporting of work-related fatalities, injuries, and illnesses occurring among DOE contractor/subcontractor employees arising out of work primarily performed at DOE-owned or DOE-leased facilities under their direction. Reporting is not required for subcontractor employees whose work is limited to transient activities and does not include an onsite office and for whom direction/oversight is not provided by DOE or a DOE contractor.

DOE O 231.1A, *Environment, Safety and Health Reporting*, requires documentation of occupational fatalities, injuries and illnesses in accordance with DOE M 231.1-1A, *Environment, Safety and Health Reporting Manual, Attachment 2, Contractor Requirements Document*.

For each work-related fatality, injury, or illness experienced by a DOE contractor/subcontractor employee, that DOE contractor/subcontractor will complete a hardcopy of form DOE F 5484.3, *Individual Accident/Incident Report*. Tabulations of work hours will be collected and for each contractor and subcontractor will be recorded on a hardcopy of DOE F 5484.4, *Tabulation of Work Hours*. Completed (new and revised) hardcopies of form DOE F 5484.3, and DOE F 5484.4 will be distributed as described in the attached table. The appointed DOE CAIRS Coordinator is responsible for ensuring the electronic submission of this data into the DOE Computerized Accident/Incident Reporting System as required by DOE M 231.1-1A.

Submission of this information to the DOE does not release the DOE contractor/subcontractor from satisfying similar reporting obligations required by 29 Code of Federal Regulations, Part 1904 for the U.S. Department of Labor (OSHA).

3. BILLING INSTRUCTIONS

BILLING INSTRUCTIONS

(For Cost-Reimbursement Type Contracts)

- I. Introduction. These instructions are provided for use by Contractors in the preparation and submission of vouchers requesting reimbursement on a voucher submission payment basis for work performed under cost reimbursement type contracts. These instructions are applicable to Letter of Credit contractors only when submitting a final voucher unless otherwise indicated. Compliance with these instructions will reduce correspondence, and other causes for delay, to a minimum and will thus promote prompt payments to the Contractor.
- II. Voucher Form. In requesting reimbursement, Contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal) (see Exhibit A), supported by a Statement of Cost (see Exhibit B). An acceptable substitute (which provides the same necessary information as found in Exhibits A and B of these instructions) may be used.
- III. Preparation. Standard Form 1034 shall be completed in accordance with the following instructional notations (see counterpart notations on Exhibit A):
 - (1) Leave Blank.
 - (2) Enter voucher number (number consecutively, commencing with "1 "). Completion/final vouchers shall clearly be marked as such.
 - (3) Enter date voucher prepared.
 - (4) Enter contract number and date of contract award.
 - (5) Enter contractor's name, mailing address, and telephone number of office responsible for submitting voucher.
 - (6) If a task order or project agreement is involved in the billing, enter the number and date, of the task order or project agreement, otherwise leave blank.
 - (7) Identify the period the billing covers (e.g., "Jan. 2006" or "Jan-Mar. 2006 ").

- (8) Enter the dollar amount of this billing. The amount claimed must agree with the amount reflected in the attached Statement of Cost (see Exhibit B).
- (9) Place an "X" in the appropriate block for the type of payment for which reimbursement is requested.

- IV. Billing Period. Vouchers shall be submitted no more frequently than once every 2 weeks (except that small business concerns may invoice more frequently).
- V. The Statement of Cost shall be completed substantially as shown in Exhibit B, making due allowance for the Contractor's cost accounting system. Costs claimed shall be only those recorded costs authorized for billing by the payment provisions of the contract. Indirect costs claimed shall reflect actual experience, but in no event shall exceed those approved for billing purposes by the Contracting Officer. Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer may require.
- VI. Submission. An original voucher shall be submitted to the Payment Office specified in Block 12 of the SF 26, Award/Contract. A copy of the voucher shall also be submitted to the DOE Contract Specialist and the DOE Technical Manager as set forth in Part I, Section G - Contract Administration Data, of this contract. Each voucher (original and two copies) shall be supported by a Statement of Cost. The Certification on the Statement of Cost attached to each voucher must be signed by a responsible official of the Contractor. If follow-up billings are necessary, they must be clearly marked to show that they are second or third billings. Completion/final vouchers shall clearly be marked as such.

EXHIBIT B

STATEMENT OF COST

The ABC Company
Anywhere, U. S. A., 01234

Contract No. _____
Voucher No. _____

Contract Amount (face value); Amount Authorized for Expenditure(obligated):

Estimated Cost \$ _____ Basic Contract\$ _____
Fixed-Fee (if any)\$ _____ All Modifications\$ _____
Total \$ _____ Contract to Date\$ _____

Period of performance covered by this billing: _____

Claimed Costs	Claimed for this Billing Period	Cumulative Claimed Through This Billing Period
Direct Labor		
Fringe Benefit @% _____		
Overhead @% _____		
Nonexpendable Items		
Including Equipment		
(List items separately)		
Materials & Supplies		
Travel		
Subcontract #1 (DEF Co.)		
Subcontract #2 (GHI Co.)		
Subcontract #3 (Smith)		
Subcontract #4 (Misc)		
Other Direct Costs		
Adjustments (Explain)	_____	_____
Total Costs (less G&A)	_____	_____
G&A @% _____	_____	_____
Total Costs	_____	_____
Fee @% _____ (if any)	_____	_____
Total costs and fee	_____	_____
Credit (Explain)	_____	_____
Contractor's share (if any)	_____	_____
Government's share	_____	_____

CERTIFICATION: I certify that this invoice is correct and in accordance with the terms of the contract and that the costs included herein have been incurred, represent payments made by the Contractor except as otherwise authorized in the payments provisions of the contract, and properly reflect the work performed.

EXPLANATION: