Department of Energy
National Nuclear Security Administration

CONTRACT
DE-AC04-00AL66620

Babcock & Wilcox
Technical Services Pantex, LLC
(B&W Pantex)

Management and Operation
of the Pantex Plant
Amarillo, Texas

National Nuclear Security Administration

As of October 2008

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As of October 1, 2008

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OMB No.
Expiration Date:

SOLICITATION, OFFER, AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700): RATING DO-E2

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2. CONTRACT NUMBER: DE-AC04-00AL66620

3. SOLICITATION NUMBER: DE-RP04-00AL66620

4. TYPE OF SOLICITATION: [ ] SEALED BID (IFB) [X] NEGOTIATED (RFP)

5. DATE ISSUED: 01/24/2000

6. REQUISITION/PURCHASE NUMBER: 04-00AL66620.000

7. ISSUED BY - CODE

U.S. Department of Energy
Albuquerque Operations Office
Contracts and Procurement Division
P.O. Box 5400
Albuquerque, NM 87185-5400

8. ADDRESS OFFER TO (if other than item 7)

Same as Block 7
Attn: Juan D. Williams, Exec. Sec.
(505) 845-5865
email: jdwilliams@doeal.gov

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and Sec. L copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in See Section L (City) until 4:00 p.m. (Hour) local time 3/10/00 (Date)

CAUTION - LATE Submission, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:

A. NAME: Juan D. Williams

B. TELEPHONE (Include area code) (NO COLLECT CALLS): 505-845-5865

C. EMAIL ADDRESS: jdwilliams@doeal.gov

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(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
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X	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 210 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), whithin the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)

14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	001 / 005	2/14/00 - 3/9	003	2/25/00
	002	2/23/00	004	2/29/00

15A. NAME AND ADDRESS OF OFFEROR — CODE — FACILITY CODE

BWXT Pantex, LLC
Route 726, Mt. Athos Road
Lynchburg, VA 24506
DUNS 12-7788292

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print): Dennis R. Ruddy, President

15B. TELEPHONE NO. (Include area code): 804-522-5085

15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE [ ]

17. SIGNATURE: Dennis R Ruddy

18. OFFER DATE: 3/20/00

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED: See Section C

20. AMOUNT: See Section B

21. ACCOUNTING AND APPROPRIATION INFORMATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: [ ] 10 U.S.C. 2304 (c) ( ) [ ] 41 U.S.C. 253 (c) ( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) — ITEM

24. ADMINISTERED BY (If other than item 7) — CODE

25. PAYMENT WILL BE MADE BY — CODE

See Contract Clause I-88

26. NAME OF CONTRACTING OFFICER (Type or print)
R. E. Glass
Manager

27. UNITED STATES OF AMERICA
R E Glass
(Signature of Contracting Officer)

28. AWARD DATE: 7/28/00

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

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PART I - THE SCHEDULE

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Part I - The Schedule

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Part I - The Schedule

Section B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 SERVICES BEING ACQUIRED

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

B.2 CONTRACT TYPE AND VALUE

(Clause B.2 as modified by M002, M019, M032, M048 & M065, M078, M100, M117, M139)

This Contract is a cost-reimbursement management and operating type contract employing performance incentives. The Estimated Cost, Performance Incentive Fee, and Fixed Fee for Work for Others are set forth below.

(a) Estimated Cost (exclusive of the Contractor's Fee) is set forth below:

(1) The transition period November 13, 2000 to January 31, 2001 will be on a cost reimbursement basis and the estimated cost is $3,283,587. There will be no fee paid for the transition period.

(2) The Estimated Cost of the specific Contract periods, exclusive of the Contractor's available award fee, estimated cost for work for others, and other reimbursable work, if any, is set forth below:

Contract Period	Estimated Cost
February 1, 2001 through September 30, 2001	$218,200,000
October 1, 2001 through September 30, 2002	$426,264,000
October 1, 2002 through September 30, 2003	$446,677,000
October 1, 2003 through September 30, 2004	$496,340,000
October 1, 2004 through September 30, 2005	$469,009,410
October 1, 2005 through September 30, 2006	$426,791,583
October 1, 2006 through September 30, 2007	$477,084,112

October 1, 2007 through September 30, 2008 $515,915,000

(3) The Estimated Cost for each subsequent NNSA fiscal year (exclusive of the Contractor's Fees) will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (a)(2) above by modification.

(b) (1) The Maximum Available Performance Incentive Fee for each fiscal year will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (b)(3) below by modification.

(2) The Fixed Fee for Work for Others for each subsequent fiscal year will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA policy and incorporated into paragraph (b)(3) below by modification.

(Following subparagraph modified by M145, M147)

(3) The total available fee is a combination of the Performance Incentive Fee and Fixed Fee related to the Work for Others and Other Reimbursable Work effort. Actual available fee will be earned by the contractor based on performance related to award fee and performance-based incentives. The total available fee pool and earned fee for the specified period(s) is set forth below:

Contract Periods	**Available Fee**	**Earned Fee**
February 1, 2001, through September 30, 2001 Award Fee & Performance-Based Incentives	$14,700,000	$12,795,811
October 1, 2001 through September 30, 2002 Award Fee & Performance-Based Incentives	$23,300,000	$21,507,809
October 1, 2002 through September 30, 2003 Award Fee, Performance-Based Incentives & Comprehensive Incentives	$23,700,000	$20,619,000
October 1, 2003 through September 30, 2004 Award Fee & Performance-Based Incentives	$26,400.000	$23,502,961
October 1, 2004 through September 30, 2005 Award Fee & Performance-Based Incentives	$28,140,565	$25,129,523

October 1, 2005 through September 30, 2006		
Award Fee & Performance-Based Incentives	$29,875,417	$27,501,337
Work for Others	$ 109,778 (est)	$ 61,221
Other Reimbursable Work	$ 538,832 (est)	$ 499,504
Total	$30,524,027	$28,062,062
October 1, 2006 through September 30, 2007		
Award Fee & Performance-Based Incentives	$33,395,888	$30,676,159
Work for Others	$ 84,238 (est)	$ 150,434
Other Reimbursable Work	$ 457,800 (est)	$ 537,040
Total	$33,937,926	$31,363,633
October 1, 2007 through September 30, 2008		
Award Fee & Performance-Based Incentives	$36,114,000	
Work for Others	$ 186,000 (est)	
Other Reimbursable Work	$ 73,000 (est)	
Total	$36,373,000	

(c) Up to thirty-five percent (35 percent) of the total available fee pool shown in (b)(3) above, excluding “Work for Others” and “Other Reimbursable Work,” for a given contract period may be paid to the Contractor provisionally in equal monthly increments of one-twelfth (1/12) of the total available fee pool amount per month. The final determination of fee will be made by the Fee Determining Official (FDO), in accordance with the fee clauses of this Contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the Section I Clause entitled “Interest”.

(d) In the event Congressional appropriation deviates by more than (plus or minus) 25 percent from the “Laboratory Table” in the President’s Budget annual requests, the Contracting Officer shall unilaterally modify the contract to adjust the Maximum Available Incentive Fee based on NNSA fee policy.

(Following subparagraph modified by M151)

(e) Pursuant to the Contract’s Section I Clause entitled “Obligation of Funds,” the total amount obligated by the Government is $ (See the latest obligation of funds modification).

B.3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in the Contract Clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the

availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.

B.4 RESERVED
(Clause B.4 as modified by M019)

Part I - The Schedule

Section C

DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES

STATEMENT OF WORK

C.1 GENERAL INFORMATION

1.0 Introduction

(Clause C.1 as modified by M043)

Specific work requirements under this Contract will be established annually by the Contracting Officer in accordance with the Section H Clause H.19 entitled "Work Authorization System." The Contracting Officer will issue Work Authorizations for each major work area to be accomplished in a given year. These Work Authorizations will conform to the Scope of Work of this Contract and further effect the General Requirements specified in this section. In performance of the work under this Contract, the Contractor shall utilize its Implementation Plan, including milestone and measurable commitments, submitted as part of its proposal for the Contract periods of February 1, 2001 through January 31, 2003.

2.0 Background

The Pantex Plant is a Government-owned nuclear weapons assembly/disassembly facility that also manufactures High Explosive (HE) components. The facility is located near Amarillo, Texas, on approximately 9,100 acres at Pantex Plant proper and 1,077 acres of detached property called Pantex Lake, approximately 2.5 miles northeast of the main plant site. The facilities on site consist of 730 buildings on approximately 3,010,0000 gross square feet (gsf). Plant facilities can be divided into several broad categories: production/laboratory (90 Buildings and 915,000 gsf), storage (235 Buildings, 680,000 gsf), administrative (160 Buildings, 715,000 gsf), support (230 Buildings, 635,000 gsf), and safe shutdown (15 Buildings, 65,000 gsf). As of October 1, 1999, the Pantex Plant employment level was approximately 2,800 people in various disciplines.

The Pantex Plant is one of several production plants that are critical to the Department of Energy's (DOE) Stockpile Stewardship Program. For most of its history and continuing today, the primary missions of the Pantex Plant are the assembly and disassembly of nuclear weapons and the manufacture of HE components.

With the end of the Cold War, DOE has made major programmatic decisions that affect the current and future operation of the Pantex Plant. Presidential decisions and international treaties have required the Pantex Plant to dismantle a significant fraction of the Cold War nuclear weapons stockpile during the decade of the 1990's. Most significant for the future, DOE determined in the 1996 Record of Decision for the Stockpile Stewardship and Management Programmatic Environmental Impact Statement that the Pantex Plant would be the sole U.S. site for the maintenance, refurbishment, and eventual dismantlement of the future (smaller) U.S. nuclear weapon stockpile.

In performing its mission the facility must closely interact with other production plants and design laboratories in the Nuclear Weapons Complex (NWC), other DOE Offices (such as Headquarters (HQ) and Operations Offices) and numerous other organizations including the Defense Nuclear Facilities Safety Board and the State of Texas. The Pantex Plant is operated under the direction of the DOE Amarillo Area Office.

The challenges facing the facility are to have a balanced nuclear weapons complex workload, a modern integrated complex with unique and interdependent facilities, an operationally-ready state-of-the-art production capability (efficient, agile, responsive, streamlined), and a stimulating work environment to attract and retain a workforce with the required technical skills and capabilities.

3.0 Scope of Work

The Scope of Work under this management and operating Contract is comprehensive in that the purpose of the Contract is to perform all necessary operational functions as well as management functions to manage a major industrial facility and perform the National Defense missions which are assigned to that facility. This includes all ongoing objectives of the facility as well as those that may be assigned during the term of the Contract. It further includes all infrastructure management and maintenance; human resource management including critical skills recruitment and retention; environmental management and remediation; health, safety and security systems; and purchasing and other administrative systems.

The overall performance objectives of this Contract are:

- Implement world class technical business practices and safety management to establish and sustain a state of readiness that will improve the Integrated Weapon Activity Plan (IWAP) mission performance.
- Ensure the full set of manufacturing and evaluation operations can safely be performed on any weapon at any time.

- Implement new diagnostic techniques that will provide high quality data on the safety and reliability of the nuclear weapons stockpiles by FY 2006.
- Effectively use advanced design and manufacturing technologies and systems to design and produce products on short cycle times, with quality that approaches zero defects, by FY 2006.
- Establish a state of readiness by FY 2008 for high explosive component manufacturing, production requalification, and weapons assembly/disassembly operation to support a production engineering cycle time of 19 months.

In order to achieve the above results, the Contractor is expected to move to a higher level of performance throughout the term of the Contract by making the following process enhancements:

- Demonstrate a culture of continuous improvement for plant disciplines (such as disassembly and assembly of nuclear weapons, quality, meeting schedule, cost controls, authorization bases).
- Improve integration, partnering, and support among the NWC Contractors to promote early on-site problem solving and assist in NWC site issues, consolidation of business elements, and cost efficiencies.
- Develop and deploy effective strategic planning for the mission in the environment of changing budgets and technical and regulatory requirements.
- Assure effective human resource management and the availability of critical skills and capabilities to ensure operations are performed timely and efficiently.
- Ensure that the infrastructure and facilities are operationally safe, secure, compliant, and that an acceptable defined level of readiness is sustained at all facilities to meet programmatic requirements.

Operational excellence is a desired underlying philosophy and mindset expected for all of the Pantex Plant. This incorporates the principle that compliance with regulations and standards shall be accomplished while performing Pantex Plant missions on time, at a reasonable cost, and while protecting human health and the environment. Operational excellence shall include a focus on the requisite rigor and discipline in all aspects of Contractor activities and, in particular, holding management and staff accountable. To achieve this operational excellence, it is essential that operations at the Pantex Plant be performed in a manner that meets DOE and other regulatory objectives. Therefore, a disciplined, effective and efficient management system to achieve current expectations in Nuclear Facility Operations is a significant additional objective of this Contract.

C.2 WORK REQUIREMENTS

1.0 Introduction

Specific work requirements under this Contract will be established annually by the Contracting Officer in accordance with the Section H clause H.19 entitled "Work Authorization System." The Contracting Officer will issue Work Authorization Directives for each major work area to be accomplished in a given year. These directives will conform to the Scope of Work of this Contract and further effect the General Requirements specified in this section.

2.0 General Requirements

2.1 Defense Programs Strategic Planning Process

The Contractor shall contribute to the development of the DOE's Office of Defense Programs (DP) strategic planning process and the Contractor shall execute those plans. The goal of the DP planning process is to integrate programmatic work to maximize scientific and technical work accomplishment, while minimizing duplication between programs and sites and while providing for major investments in facilities within essentially fixed budgets. Work is defined in three major categories:

- **Directed Stockpile Work** is activity that supports ongoing stockpile maintenance and refurbishment work as well as the scientific understanding and engineering development capabilities necessary for the refurbishment and certification of the stockpile to support Stockpile Life Extension Programs.
- **Campaigns** are focused efforts involving the weapons plants, the three weapons laboratories, and the Nevada Test Site (NTS), to address critical capabilities needed to achieve key future program objectives. Campaigns are technically challenging, multi-function efforts that have definitive milestones, specific work plans, and specific end dates. The Pantex Plant is a major participant in the Enhanced Surveillance and Advanced Design and Production Technologies engineering campaigns, and the plant is the lead and focus of the High Explosive Assembly Readiness Campaign.
- **Readiness in Technology Base and Facilities** are those scientific and technical activities required to ensure that the infrastructure and facilities are operationally safe, secure, compliant, and that an acceptable defined level of readiness is sustained at all facilities.

2.2 Technology and Business Integration

The Contractor shall utilize the best available technology and management practices from both Government and commercial sources to improve and achieve excellence. The DOE is continuously looking for opportunities to optimize the efficiency of the site and the collective accomplishment of the weapons production mission through integration of multiple site activities.

The Contractor shall propose and participate with other DOE Contractors and other Federal Contractors and agencies to support these efficiencies. If a stockpile stewardship function were centralized at a single site, the Government would provide these centralized materials and services to the other sites. Therefore, the DOE reserves the right to reassign missions, both core and non-core responsibilities that are in the best interest of the Government, and requires the Contractor to propose and support such initiatives.

The Contractor shall provide the management expertise and such other services as may be necessary to accomplish the efficient operation of the facilities at the Pantex Plant. The Contractor shall maintain national security mission competency and capability.

2.3 Plant-Directed Research, Development and Demonstration (PDRD) Program (Added M011)

The Contractor shall conduct a DOE-approved Plant-Directed Research, Development and Demonstration (PDRD) Program that supports science-based manufacturing related to the National Nuclear Security Administration (NNSA) weapons mission, and encourages advanced research, development, and demonstration work to enhance the science and technology capabilities and core competencies required to fulfill the mission of the plant.

3.0 Directed Stockpile Work

Directed Stockpile Work includes weapons programs and production support programs. These programs are performed to achieve stockpile evaluation, stockpile maintenance, and nuclear weapons assembly and disassembly objectives in accordance with DOE directive schedules. The Contractor shall provide the following:

3.1 Weapons Programs

Provide management of the assembly, disassembly, evaluation, and maintenance of nuclear weapons as follows:

- Assemble and disassemble nuclear weapons in support of the DOE Stockpile Life Extension Programs and the stockpile evaluation program.
- Fabricate (synthesis, formulation, pressing, and machining) High Explosive materials and components to support DOE Stockpile Life Extension Programs and the stockpile evaluation program.
- Repair and modify nuclear weapons, components, and related devices.
- Store nuclear weapons and weapon components.
- Management of the storage of excess and national security plutonium pits.
- Disassemble nuclear weapons and related devices no longer required in the military stockpile.
- Disposition weapon components.
- Procure, manage, and maintain plutonium pit storage and shipping containers.
- Interim storage and packaging of Highly Enriched Uranium and Tritium components.
- Manage a weapons quality control program to ensure that products meet design agency specifications, and certify in writing that weapons material submitted to DOE meets the requirements of applicable drawings, specifications, and instructions.
- Perform research, development, testing and engineering work for the current and future Pantex Plant production mission to include development work in support of the weapon laboratories.
- Support DOE production information systems.
- Provide management systems that meet DOE requirements for nuclear facility and nuclear explosive safety.

3.2 Production Support Programs

- Provide management of operations and support activities to support the nuclear weapons program functions and maintain core mission competencies and capabilities. These activities include Quality Supervision and Control, Production Supervision and Control, Production Engineering, and other mission support.
- Provide leadership in the development and maintenance of the Integrated Weapon Activity Plan, integrate the plan between NWC sites and perform the Pantex Plant assigned tasks.

- Provide support to other Management and Operating Contractors in the collective accomplishment of the NWC production mission.
- Provide analytical capabilities for site operations (such as gas laboratory, chemical laboratory, firing site for high explosives, and non-destructive testing).

4.0 Campaigns

4.1 Enhanced Surveillance Campaign

Implement new diagnostic techniques to be used by the Core Surveillance Program. These techniques will provide high quality data on the safety and reliability of the nuclear weapons stockpiles by FY 2006.

4.2 Advanced Design and Production Technologies Campaign

Effectively use advanced design and manufacturing technologies and systems to design and produce products on short cycle times, with quality that approaches zero defects by FY 2006.

4.3 High Explosive/Assembly Readiness Campaign

Establish a state of readiness by FY 2008 for high explosive component manufacturing, production requalification, and weapons assembly/disassembly operation to support a production engineering cycle time of 19 months.

4.4 Additional Campaigns

Perform work in areas of other Campaigns as they are identified and established along with their associated implementation plans.

5.0 Readiness in Technology Base and Facilities

The Contractor shall provide management and administrative capabilities to maintain the Pantex Plant in the production readiness posture defined by DOE. Maintaining this state of readiness requires the Contractor to provide the following administrative and technical capabilities, and to provide an annual assessment of its Readiness to DOE each year.

5.1 General Management, Administration and Oversight

The Contractor shall be fully responsible and accountable for the safe accomplishments of all work, whether performed by its own personnel or subcontractors. The Contractor shall be responsible for planning,

integrating, managing and executing the programs, projects, operations and other activities as described in this scope of work such that all functions are fully integrated and work is accomplished safely. The Contractor shall provide general management and program management functions that include: legal services, audit services, business systems management, human resources, property management, information resources, financial support, safeguards and security, public information and external communications activities, intergovernmental affairs, training, procurement, and industrial relations. The Contractor shall establish clear ES&H priorities and manage activities in proactive ways that complies with human health, safety and environmental regulations; minimizes wastes; and complies with applicable regulatory requirements and DOE directives. In addition, the Contractor is responsible for the oversight of operations and ES&H and quality assurance within its own organization and its subcontractor's organizations.

5.2 Waste Management

The Contractor shall manage and perform Waste minimization activities and Waste management activities to support plant operations.

5.3 Construction Programs and Capital Equipment

Construction programs include the design and construction of facilities necessary for the performance of Pantex Plant missions. The Contractor shall:

- Manage the design, construction, procurement/installation and startup of plant/equipment for Pantex Plant capital facilities.
- Procure and install specific equipment items pursuant to capitalization criteria as defined by DOE.

It is expected that these projects and activities will be accomplished on or ahead of schedule, within budget, and will meet stated purpose or objective. During the term of the contract, significant recapitalization will be required to meet production readiness objectives.

5.4 Asset Management

The Contractor shall perform custodial management of government-owned facilities and equipment at the Pantex Plant, and in doing so provide the following:

- Planning/Engineering/Support - The Contractor shall manage government-owned, leased, or controlled real property and

attendant facilities under this Contract. Specific activities include land and facility use planning, real property management, construction project management, utility management, and maintenance management.

- Utility Operations - The Contractor shall manage utility operations that include support for all electric service, fuel oil, natural gas, potable water/sewer service, purified water, nitrogen, steam, chilled water, and non-potable hot water operations and utility services, whether contracted for by the Contractor or DOE. Included in Contractor's responsibilities is the operation of boiler/chiller plants, utility systems, procured utilities, and managing the facility in an energy efficient manner per developed energy management plans.

- Maintenance - The Contractor shall manage the Pantex Plant maintenance activities, including equipment and facilities, custodial services, rearrangements, modifications, and special project services for facilities. The Contractor shall perform periodic condition assessments of the property to determine any deterioration or technical obsolescence that may threaten performance or safety.

5.5 Site Services

The Contractor shall provide the following Site Services:

- Safety Program - Manage a safety program for hazardous material and nuclear explosive packaging and transportation, high explosive safety, nuclear explosive safety, nuclear facility safety, systems engineering, configuration management, risk management, emergency medical services, industrial and electrical safety, construction safety, fire prevention, and fire protection.

- Health Program - Manage a health program for radiation safety, industrial hygiene, radiological protection, and occupational medicine.

- Environmental Program - Manage an environmental program. Assist DOE in technical document reviews, programmatic logistical support, and coordination of the Agreement in Principle with the State of Texas and other grant or cooperative agreement activities as defined by DOE.

- Safeguards and Security - Manage the Pantex Plant nuclear weapons and nuclear materials safeguards and security. In addition, provide general industrial security services for general plant operations.

- Emergency Services - Manage onsite emergency management and emergency operations programs.

5.6 Other Site Services

The Contractor shall provide other site services that are incidental or related to this Statement of Work as directed by the Contracting Officer and funded by DOE. In addition, the Contractor shall provide facilities management and other infrastructure related services and support, as directed by DOE, to the Amarillo Area Office, Transportation Safeguards Division - Pantex Courier Section, DOE Tri-Laboratory Office and Sandia-operated Weapons Evaluation Test Laboratory (WETL) operations at the Pantex Plant.

6.0 Other DOE Program Support

6.1 Non-Proliferation, Treaty-Related Issues, and Verification

The Contractor shall support planning activities and shall execute assigned tasks related to worldwide non-proliferation programs, treaty-related activities, and DOE transparency and verification initiatives.

6.2 Emergency Response

The Contractor shall provide support to DOE for defined programs including DOE's radiological assistance program, DOE's worldwide weapons accident response management, and other investigations or advisory groups.

6.3 Environmental Restoration and Decontamination & Decommissioning (D&D)

The Contractor shall manage and perform environmental characterization and restoration activities associated with past operations of the Pantex Plant, and perform assigned facility D&D activities.

6.4 Surplus Plutonium Pit Storage

The Contractor shall support planning activities and shall execute assigned tasks related to the storage, packaging, and shipment of surplus plutonium

pits.

6.5 Workers Compensation Matters
(Sub-paragraph added by M074)

The Contractor may, from time to time, be directed by the Contracting Officer to manage certain Workers Compensation Matters arising out of the operations of other plants within the Weapons Complex owned by the Department of Energy or its predecessor agencies and managed by the Mason & Hanger Corporation. The sites involved may include the former Iowa Ordnance Plant in Burlington Iowa, the Medina Facility outside of San Antonio, Texas and the Clarksville facility in Clarksville, Tennessee associated with Fort Campbell Military reservation.

7.0 Other non-DOE Support (M139)

The Contractor shall manage and execute other assigned programs related to the Pantex Plant mission for other Government agencies or privately owned organizations on a non-interference basis with other DOE work.

In addition, the contractor will provide site support (i.e., technical: environmental; safety and health; security; administrative; etc.) to other federal agencies and/or contractors performing work at the Pantex Plant as directed by the Contracting Officer.

C.3 DELIVERABLES
(Clause C.3 as modified by M043)

The primary deliverable under this Contract is Nuclear Weapons assembly and disassembly. To ensure that effective and efficient management systems exist for the management and operation of the Pantex Plant, this Contract also requires the delivery of certain documents, plans, and reports for the Contracting Officer's review and approval. These requirements are specified elsewhere in this Contract; however, they include the following:

Site Safeguards and Security Plan (DOE Order 470.1)
Quality Assurance Plan (10 CFR 830.120)
Radiation Protection Plan (10 CFR 835)
Emergency Preparedness Plan (DOE Order 151.1)
Material Control and Accounting Plan (DOE 5633.3B)
Authorization Agreements
Diversity Plan
Standards/Requirements Identification Document
Integrated Safety Management Program Plan (DEAR 970.5204-2)

The Contracting Officer may require additional reports, analysis, or other information relevant to the Pantex Plant management and operations.

C.4 WORK STANDARDS

In performing this Contract, the Contractor shall comply with applicable federal, state, and local laws and regulations; and shall be responsible for obtaining such licenses, permits, and other authorization that may be necessary for the performance of the work.

Pursuant to the Contract Clause entitled "Laws, Regulations, and DOE Directives," the Contractor shall conform to the requirements of all applicable DOE Orders and Directives which may establish management, technical, procedural or other standards, and specifications for Contractor work activities. The Orders and Directives applicable to this Contract are contained at Section J, Appendix E.

Part I - The Schedule

Section D

PACKAGING AND MARKING

D.1 RESERVED

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Part I - The Schedule

Section E

INSPECTION AND ACCEPTANCE

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

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

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

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

(d) If any of the services performed do not conform with Contract requirements, the Government may require the Contractor to perform the services again in conformity with Contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce any fee payable under the Contract to reflect the reduced value of the services performed.

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

E.2 INSPECTION AND ACCEPTANCE

(Clause E.2 as modified by M117)

The Contracting Officer or any other duly authorized representative shall accomplish inspection of all activities and acceptance for all work and effort under this Contract.

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Part I - The Schedule

Section F

DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT

(Following paragraph modified per M100)
The term of this Contract shall be for the period of November 13, 2000 through September 30, 2010, unless sooner terminated in accordance with the provisions of this Contract. This period includes the transition period of November 2000 through February 2001.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations, with the principal place of performance being the Pantex Plant near Amarillo, Texas.

F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT

(a) The Government may extend the term of this Contract by written notice to the Contractor within 30 days, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 12 months before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) The total duration of this Contract shall not exceed ten years, not including the transition period.

F.4 EXERCISE OF OPTION(S)

The DOE has included an option to extend the term of this Contract in order to demonstrate the value it places on quality performance. The DOE has provided a mechanism for continuing a contractual relationship with a successful Contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance under this Contract.

(Following paragraph modified per M002)
The Option Periods, covering the period from February 1, 2006 to January 31, 2011 may be for a period(s) from one to five years. The Contracting Officer will determine the duration of the option period(s) at the time of written notification to the Contractor.

Successive options may be exercised up to a total of five years. The total term shall not extend beyond January 31, 2011.

F.5 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) (ALTERNATE I) (APR 1984)

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

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination Clause of the Contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if--

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

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

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

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

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Part I - The Schedule

Section G

CONTRACT ADMINISTRATION DATA

G.1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE/MATTERS

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

(Clause G.1 as modified by M043)

(a) Technical and Administrative Correspondence/Matters. Technical and administrative correspondence (including waivers, deviations, or modifications to the requirements, terms, or conditions of this Contract,) concerning performance of this Contract shall be addressed to the NNSA Site Manager at the Pantex Site Office (PXSO). The NNSA Site Manager, or designee, is the Contracting Officer for administration of technical and administrative matters for this Contract. The Contractor shall use the PXSO as the focal point for all technical and administrative matters regarding this Contract, except as otherwise specifically delegated pursuant to subparagraph (b) of the Section H Clause entitled "Performance Direction." Administration includes the issuance of Work Authorizations (WAs) and modifications thereto.

(b) DOE/NNSA Contracting Office. The Contracting Officer's address is:

Site Manager
U.S. Department of Energy/NNSA
Pantex Site Office
P.O. Box 30030
Amarillo, TX 79120

(c) Patents/Technical Data Correspondence. Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, NNSA Service Center, U.S. Department of Energy/NNSA, P.O. Box 5400, Albuquerque, New Mexico, 87185-5400.

(d) Subject Line(s). All correspondence shall contain a subject line commencing with the Contract Number, as illustrated below:

"SUBJECT: Contract No. DE-AC04-00AL66620 (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval")."

G.2 CONTRACT ADMINISTRATION

(Clause G.2 as modified by M117)

Contract Administration Office. The address for the Contracting Officer for administration is:

Contracting Officer
Office of Contract Administration and Business Management
U.S. Department of Energy
National Nuclear Security Administration
Pantex Site Office
P.O. Box 30030
Amarillo, TX 79120

Part I - The Schedule

Section H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

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

H.2 MODIFICATION AUTHORITY

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

(a) Accept nonconforming work;

(b) Waive any requirement of this contract; or

(c) Modify any term or condition of this Contract.

H.3 SUBCONTRACT LABOR LAW APPLICATION
(Clause H.3 as modified by M116)

(a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.

(b) For subcontracts relating to construction in excess of $2,000 subject to the Davis-Bacon Act, the Contractor shall follow the requirements of FAR 22.4, Labor Standards for Contracts Involving Construction, to the same extent that they would apply if the subcontract had been directly awarded by DOE.

H.4 SMALL BUSINESS SUBCONTRACTING PLAN
(Clause H.4 as modified by M032)

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

H.5 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS PARTICIPATION TARGETS

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

H.6 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

(Clause H.6 as modified by M003)

Pursuant to the clause entitled "Property," set forth elsewhere in this Contract, effective February 1, 2001, the Government shall furnish and the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC04-91AL65030.

H.7 APPROVAL OF EXPENDITURES

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

H.8 RESERVED

H.9 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

(Clause H.9 as modified by M003)

On February 1, 2001, the Government shall furnish and the Contractor shall assume responsibility for existing contracts and other agreements from Contract No. DE-AC04-91AL65030."

H.10 PRIVACY ACT SYSTEMS OF RECORDS

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

DOE System No.	Title
(DOE-5 added per M003)	
DOE-5	Former Contractor Employees. (Employment Records of Employees of the Mason & Hanger Corporation or their predecessor and Battelle-Pantex employees at the Pantex Site, if any, who worked at the Pantex Site.)
DOE-31	Firearms Qualifications Records (The DOE and Contractor Employees at Pantex Plant.)
DOE-33	Personnel Medical Records (Present and former DOE employees, Contractor Employees, and other persons at Pantex Plant receiving routine, periodic, and emergency medical examination or treatment.)
DOE-35	Personnel Radiation Exposure Records (Past and present DOE and Contractor employees and other persons having access to Pantex Plant.)
DOE-38	Occupational and Industrial Accident Records (The DOE and Contractor employees and other persons having access to Pantex Plant and having accidents at Pantex Plant, or individuals involved in accidents with DOE or Contractor employees.)
(DOE-43 added per M003)	
DOE-43	Personnel Security Clearance Files (Employees and applicants for employment with DOE and DOE contractors; consultants; other individuals requiring access to classified information and facilities; access permittees who are authorized access as are maintained or administered by the Contractor.)
DOE-45	Weapon Data Access Control System (The DOE, DOD, or other Government agency employees, Government Contractors, consultants, and other persons requiring access to classified weapons data or Pantex Plant nuclear weapons program facilities.)
(DOE-H.50 as modified by M153)	
DOE-50	Human Reliability Program (HRP) (The DOE or Contractor employees or individuals under Pantex Plant HRP.) Records of medical examination results and HRP-related training records.

DOE-51 Employee and Visitor Access Control System (The DOE and Contractor employees and other individuals working or visiting at Pantex Plant.)

DOE-77 Physical Fitness Records (The DOE Contractor employees.)

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

H.11 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

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

H.12 CONTRACTOR EMPLOYEES: EMPLOYER/EMPLOYEE RELATIONSHIP

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

The Contractor's employees normally engaged in the performance of this contract may be retained on the allowable costs payroll and used intermittently by the Contractor on work other than in the performance of this contract; provided, however, that during the period of such intermittent use, including time spent in traveling to and from the site of such work, the employee shall not be deemed to be performing work, under this contract, and insurance coverage of the Contractor, the premiums or costs of which are allowable costs under this contract (including Workmen's Compensation, employer's liability and public liability insurance), shall not be applicable or used to defend against or pay any liability of the Contractor to such employees (or persons claiming through them) or to other persons. With respect to such intermittent services, the Contractor shall credit to the account of the government, as provided in the Contract Clause entitled "Payments and Advances," or as otherwise directed by the DOE, the amounts paid to the Contractor to the employees or other persons, or contributed to any benefits plans for such

employees, from Government funds, which relate to such employees' work for the Contractor not in the performance of this contract. Set amount or amounts shall include, but not be limited to, travel, per diem, and surviving spouse payments, if any, actual salaries and wages of the persons performing such services plus a percentage factor of such salaries and wages in lieu of direct payment for payroll taxes and benefits. The aforementioned factor shall be established for each ensuing year as mutually agreed between the Contracting Officer and the Contractor.

H.13 CONTRACTOR'S MANAGERIAL PERSONNEL

(Clause H.13 as modified by M117)

For the purpose of identifying the Managerial Personnel defined in the Contract Clause entitled "Property," and the reference to Managerial Personnel in the Contract Clause entitled "Insurance-Litigation and Claims," they are the same personnel as those Key Personnel identified in Appendix D of this Contract.

H.14 RESERVED

H.15 LOBBYING RESTRICTIONS

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

H.16 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.17 RESERVED.

(Paragraph deleted per M139)

H.18 LIMITATION OF LONG TERM LIABILITY REGARDING PERSONNEL COSTS

It is DOE's goal to develop an approach to personnel costs which maintains the full value of worker's benefits packages while at the same time limiting DOE's long term liability. The Contractor agrees to submit a plan to DOE during FY 2001 for achieving this goal.

H.19 WORK AUTHORIZATION SYSTEM

(Clause H.19 as modified by M043)

(a) Prior to the start of each fiscal year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the Contracting Officer, or other designated official, a detailed Statement of Work (SOW), a budget of estimated costs, and a schedule of performance for the work to be performed during the next fiscal year.

(b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at level 3 or as otherwise specified by the Contracting Officer. The established description of work, estimated costs, and schedule of performance shall be incorporated into Work Authorizations (WAs). WAs, which are signed by the Contractor and the Contracting Officer's Representative (COR), are issued by the Contracting Officer and are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated costs for the WAs, the Contracting Officer shall issue unilateral WAs pursuant to this clause which shall not be subject to appeal under the Contract Clause entitled "Disputes."

(c) No activities shall be authorized and no costs incurred until either the Contracting Officer has issued a WAs or the Contracting Officer has issued direction concerning continuation of activities.

(d) Work Authorizations. The WA authorizing the Contractor to proceed with performance shall be provided to the Contractor by the Contracting Officer. Each WA so issued will include as a minimum the following:

(1) Authorization number and effective date;

(2) Description of work;

(3) Estimated cost (and estimated cost for the work to be performed under this authorization if the WA performance schedule exceeds the current contract period of performance);

(4) Appropriate performance objectives, schedule, and milestone dates;

(5) Cost, schedule, and all other reporting requirements;

(6) Date of issue;

(7) Contractor's signature;

(8) Contracting Officer's signature.

(e) Performance Direction. Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with Section H provision entitled "Performance Direction."

(f) Modification of Work Authorizations. The Contracting Officer may at any time and without notice issue changes to the WA within the SOW of the Contract requiring additional work, or directing the omission of, or changes to the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In addition, the Contractor shall notify the Contracting Officer immediately whenever the cost incurred to date plus the projected cost to complete the work on any WA is expected to exceed or underrun the estimated cost by ten percent of the WA. In this case, the Contractor shall submit a proposal for a change in the WA in accordance with paragraphs (a) and (b) of this clause.

(g) Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Contract Clause entitled "Obligation of Funds."

(h) Order of Precedence. This clause is of lesser order of precedence than the Contract Clauses entitled "Allowable Costs, Base Fee, and Performance Fee (Management and Operating Contracts)"; "Obligation of Funds," and "Payments and Advances." The Contractor is not authorized to incur costs on any WA which is not in compliance with the other terms and conditions of this Contract.

(i) In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, “List of Applicable Directives,” as amended, the Contractor shall obtain guidance from the Contracting Officer.

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

costs and schedule of performance of work established in accordance with paragraphs (a) and (b) of this clause.

H.20 PERFORMANCE DIRECTION

(Clause H.20 as modified by M043)

(a) The contractor is responsible for the management, integration, and operation of the site in accordance with the Terms and Conditions of the contract, duly issued Work Authorizations (WAs), and written guidance provided by the Contracting Officer and the Contracting Officer's Representative (COR). NNSA is responsible for establishing the work to be accomplished, the applicable standards and requirements to be met, and overseeing the work of the contractor. The contractor will use its expertise and ingenuity in contract performance and in making choices among acceptable alternatives to most effectively and efficiently accomplish the work called for by this contract.

(b) Only the Contracting Officer may assign, modify, and priority rank WAs.

(c) (1) The Contracting Officer and the NNSA Administrator will designate, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or Terms and Conditions of the contract.

(2) The contractor must comply with written Performance Directions that are signed by the COR and:

(i) Redirect the contract effort, shift work emphasis within a work area or a WA, require pursuit of certain lines of inquiry, further define or otherwise serve to accomplish the Statement of Work (SOW), or

(ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.

(3) Performance Direction does not:

(i) authorize the contractor to exceed the funds obligated on the contract;

(ii) authorize any increased cost or delay in delivery in a WA;

(iii) entitle the contractor to an increase in fee; or

(iv) change any of the terms or conditions of the contract.

(d) (1) The contractor shall accept only Performance Direction that is provided in writing by a COR and that is within the SOW and a WA.

(2) The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the contractor.

(e) (1) The contractor shall promptly comply with each duly issued Performance Direction unless the contractor reasonably believes that the Performance Direction violates this clause. If the contractor believes the Performance Direction violates this clause, the contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. The contractor shall confirm these reasons in writing to the Contracting Officer within ten workdays from receipt of the Performance Direction.

(2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the contractor shall promptly comply with the Contracting Officer's direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Changes clause.

(f) The parties agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this contract.

H.21 REPORTING REQUIREMENTS

(Clause H.20 as modified by M043)

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

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

generally as follows:

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

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

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

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

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

(1) Consistency with the Contract Statement of Work, the WAs, the approved WBS, and the existing accounting structure; and

(2) Correlation of data among the various plans and reports.

(c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Authorization System. During performance of this Contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Statement of Work or WAs. The Contractor's reporting system shall be able to provide for the following at the WA level or such lower level, as specified by the Contracting Officer.

(1) Incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;

(2) Reconcile estimated costs for those elements of the WBS identified in the Contract as either priced line items or discrete WAs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:

(i) Changes to the authorized work; and,

(ii) Internal replanning in the detail needed by management for effective control;

(3) Prohibit retroactive changes to records pertaining to work performed that will change previously reported costs except for correction of errors and routine accounting adjustments;

(4) Prevent revisions to the Contract estimated costs except for Government-directed or approved changes to the contractual effort; and

(5) Document changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.

(d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.

(e) The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when--

(1) The value of the subcontract is greater than $2 million, unless specifically waived by the Contracting Officer, or

(2) The Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the Contract.

H.22 RESERVED

H.23 THIRD PARTIES

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

H.24 DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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

H.25 RESERVED
(Clause H.25 as modified by M117)

H.26 WORK ALLOCATION

(a) It is DOE policy to foster labor peace and encourage work allocation in such a manner that the work will be performed in an expeditious and resource-economical fashion by trained employees. Occasionally, work which does not clearly fall within the jurisdiction of any single labor or collective bargaining agreement to which the Contractor is a party, must be performed (such work is hereinafter referred to as “Unassigned Work").

(b) The Contractor shall establish a process, consistent with applicable DOE guidance, that is reasonably calculated to allocate Unassigned Work in a manner agreeable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.

(c) Nothing in this clause shall be construed to restrict the Contractor from performing Unassigned Work in accordance with either the terms of this Contract or written direction of the Contracting Officer.

H.27 RESERVED.
(Paragraph deleted per M139)

H.28 RESERVED.
(Paragraph deleted per M139)

H.29 RESERVED
(Paragraph modified by M117)

H.30 ADVANCE UNDERSTANDING ON HUMAN RESOURCES

(a) Advance Understanding on Human Resources

The Department and the successful Offeror (Contractor) will reach an advance understanding on Contractor human resources during the transition period. The advance understanding enables both the Contractor and the DOE to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; provide appropriate and reasonable compensation levels to recruit and retain Contractor employees to meet DOE mission objectives; and assure prudent expenditure of public funds. Areas generally covered by the advance understanding include compensation, welfare benefits, labor relations, retirement plans, training, educational assistance, awards programs, employee assistance, and paid leave and holidays. DOE Order

350.1, "Human Resources Management Program," will serve as the governing document for development of the advance understanding. It is understood that any advance understanding will be appended to the Contract as Section J, Appendix A.

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

(Following paragraph modified per M002)

(b) Employee Transition and Continuity of Employment, Pay and Benefits

On February 1, 2001, except for the incumbent contractor's Key Personnel, all incumbent employees will become employees of the Contractor. DOE expects the Contractor to subsequently exercise appropriate managerial judgment regarding employee retention and job assignments.

In order to minimize unnecessary disruption to the existing workforce, and to minimize severance costs, the incumbent contractor's non-represented, non-management employees who transfer to the Contractor shall retain equivalent pay and benefits. All represented employees will retain pay in accordance with collective bargaining agreements. It is the intent of the parties that the Contractor assume sponsorship of the incumbent contractor's defined benefit pension plan. However, it is recognized that there may be reasons that the Contractor may not be able, or that it may not be feasible, to continue the exact benefit plans the incumbent has in place. The Contractor shall continue, with minimal disruption to the workforce, defined contribution, health and welfare, and leave of absence programs that are substantially equivalent to the programs maintained by the incumbent contractor.

(c) Labor Relations

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

(d) Continuity of Service Credit

Except for the Key Personnel, all employees shall maintain their current service credit date for benefit earnings.

H.31 CORPORATE HOME OFFICE EXPENSES

No corporate home office expense of the Contractor shall be allowable under this Contract without the prior written approval of the Contracting Officer.

H.32 SEPARATE CORPORATE ENTITY

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

H.33 RESPONSIBLE CORPORATE OFFICIAL

(Clause H.33 as modified by M117, M145)

Notwithstanding the Section H provision entitled "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name:	Robert S. Cochran
Position:	President
Company:	Babcock & Wilcox Technical Services, Inc.

H.34 PERFORMANCE GUARANTEE

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

bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.35 RESERVED

(Clause H.35 as modified by M117).

H.36 CONSECUTIVE NUMBERING

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

H.37 QUALITY ASSURANCE SYSTEM

The Contractor shall establish and maintain a formal Quality Assurance Program approved by the DOE that satisfies the requirements of DOE Order 414.1A, Quality Assurance. The Quality Assurance Program shall encompass all areas of performance by the Contractor. Additionally, the Quality Assurance (QA) Rule, 10 CFR Part 830.120, applies to all nuclear facilities, where nuclear facilities are defined as those that conduct activities or operations that involve radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to the employees or the general public. The QA Rule includes those activities related to design, manufacture, and assembly of items for use with radioactive materials in such form or quantity that a nuclear hazard potentially exists even when no nuclear material is present. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's approved Quality Assurance Program and/or Quality Assurance Plans.

H.38 CONFIDENTIALITY OF INFORMATION

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

(1) Information which, at the time of receipt by the Contractor, is in public domain;

(2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

(3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

(4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

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

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.

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

(e) This clause shall flow down to all appropriate subcontracts.

H.39 ENVIRONMENTAL JUSTICE

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

H.40 ENVIRONMENT, SAFETY, AND HEALTH

(Following paragraph modified per M002)
The Contract Clause entitled “Integration of Environment, Safety and Health Into Work Planning and Execution” requires the Contractor to develop and implement a Safety Management System. As part of this requirement, the Contractor shall submit to the Area Office Manager a document entitled Integrated Safety Management Program Plan that addresses how the Contractor will meet the requirements of this clause. The Contractor will notify the Area Office Manager, in writing, of any written direction or instruction which contradicts, limits, or compromises those environment, safety, and health requirements. The Contractor shall submit on February 1, 2001, and each year thereafter on September 1, an update to the Integrated Safety Management Program Plan

for the following fiscal year. Any changes to the Integrated Safety Management Program Plan after the Area Office Manager's initial approval shall be approved by the Area Office Manager.

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

H.41 ENVIRONMENTAL PERMITS AND APPLICATIONS

In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor is responsible for signing environmental permits and applications as "operator or co-operator." To clarify the resulting obligations under the Contract, the parties agree to the following:

(a) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the Contract by reason of the Contractor's execution of environmental permits.

(b) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(c) In the event of termination or expiration of this Contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.

H.42 NUCLEAR FACILITY OPERATIONS

(a) The activities under this Contract include nuclear explosive operations and the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor will exercise a degree of care commensurate with the risk involved.

(b) The Contractor shall comply with all applicable DOE nuclear safety related rules, regulations, and orders and with those nuclear safety requirements (including reporting requirements and instructions) of DOE.

H.43 SPECIAL ASSESSMENT OF CONTRACTOR PERFORMANCE

(Following paragraph last modified per M032)

(a) The Department will conduct a Special Assessment of the Contractor's overall performance against established performance standards following completion of the second full year of the contract performance. This Special Assessment is in addition to the periodic appraisals and evaluations otherwise required by this Contract. The purpose of the assessment will be to determine whether the overall level of performance in the first two years of the Contract meets or exceeds quality performance expectations as defined below. This assessment allows DOE to make an informed decision regarding Contract term.

(b) The Special Assessment will review annual performance evaluations in accordance with the PEMP and Contractor performance against the milestones in the:

(1) Implementation Plan provided by the Contractor as part of its Contract proposal, and

(2) The Integrated Weapon Activity Plan (IWAP) referenced in the Statement of Work.

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The Contractor will be given an opportunity to review and comment on the resulting assessment.

(c) If, based upon results of the Special Assessment, the Contracting Officer determines that the Contractor's performance is unacceptable in that: (1) the Contractor's overall performance level is less than "good" performance (as defined in the PEMP); (2) for the second year of performance, any area of performance is rated less than good; or (3) if performance milestones in (b) have not been substantially met; the Contracting Officer may terminate the Contract in accordance with subparagraph (a)(1) of Contract Clause entitled "Termination." A decision to terminate this Contract is solely that of the Contracting Officer, consistent with a determination of whether the public interest is served thereby. The Contracting Officer will consider information submitted by the Contractor before making a final determination. If so terminated, the Contract termination effective date will coincide with the completion of the transition period for a new contract award. If the Contracting Officer determines that Contract performance should continue, the information contained in the Special Assessment will be used in determining whether the option to extend contract performance contained within this Contract should be exercised.

H.44 RESERVED
(Clause H.44 as modified by M117).

H.45 RESERVED
(Clause H.45 as modified by M117).

H.46 RESERVED
(Clause H.46 as modified by M117).

H.47 RESERVED
(Clause H.47 as modified by M117).

H.48 RESERVED
(Clause H.48 as modified by M117).

H.49 RESERVED
(Clause H.49 as modified by M117).

H.50 ROYALTY INFORMATION

(a) Cost or charges for royalties. If any royalty payments are directly involved in the contract or will be charged to the Government as costs under the contract , the Contractor agrees to report to the Contracting Officer the following information relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the

Contracting Officer, but only to the extent the Contractor has obtained licenses and is legally permitted to provide them to the Government, before execution of the contract, the offeror must furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

H.51 TRANSITION AND TRANSFER UNDERSTANDINGS AND DIRECTION

(Section added per M003)

In order to promote efficiency and economy in the transition and transfer of the management and operation of the Pantex site from the Mason & Hanger Corporation to the contractor, the DOE and the Contractor agree in accordance with the terms of Appendix I.

H-52 DEFINITION OF CONTRACTOR IN CLAUSE I. 2 (FAR CLAUSE 52.250-1)

(Clause H.52 as modified by M117)

(a) The term "Contractor" except as used in paragraphs (a) and (e) of clause I. 2 (FAR clause 52.250-1) means

(1) B&W Pantex, and

(2) B&W Pantex, member companies: B&W Technical Services, Bechtel National, Inc., and Honeywell International, Inc., including the ultimate parent companies and the affiliates of each, and

(3) Employees, officers, and directors or any of the foregoing named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of B&W Pantex, or on account of the actions or inactions undertaken by the corporations or individuals identified in subparagraphs (a), (b), or (c) of FAR clause 52.250-1 for, and on behalf of, or with respect to, B&W Pantex, under this contract;

(b) The term "Contractor" as used in paragraphs (a), and (e), of FAR clause 52.250-1 means B&W Pantex;

(c) The term "Contractor's business" as used in this clause means the management and operation of the Government's Pantex Plant at Amarillo, Texas, for the Department of Energy under this contract;

(d) The terms "Contractor's operations at any one plant or separate location in which this contract is being performed" and "a separate and complete major industrial operation in connection with the performance of this contract" as used in this clause means the Government's Pantex Plant located at Amarillo, Texas;

(e) The term "nuclear materials" as used in this clause means source, special nuclear, or byproduct materials as those terms are defined in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014;

(f) The term "agency head" as used in this clause means the Secretary of Energy; and

(g) The term "affiliate" as used in this clause means the member companies of B&W Pantex, (B&W Technical Services, as well as its ultimate parent company, McDermott International), Honeywell International, Inc., and Bechtel National, Inc., as well as companies, other than B&W Pantex, that directly or indirectly, are owned or otherwise controlled by the member companies of B&W Pantex.

H.53 TECHNICAL MONITORING OF NNSA PRIME CONTRACTS

(Section added per M084)

(a) In accordance with the contract Section I clause entitled "Changes", the Contracting Officer may identify any of the work contemplated by Section C, Statement of Work, of this Contract to be performed either by another contractor directly contracted by the NNSA or by Government employees. The Contractor agrees to fully cooperate with such other contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. For work identified for performance by another contractor directly contracted by the NNSA–

(1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.

(2) The Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such contract. No designation shall include, and the Contactor shall not perform any function determined to be inherently governmental.

(3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer's Technical Representative, any performance of a designated contractor that may not be in compliance with the terms and conditions of its contract. In addition, the Technical Monitor may take such actions to assure that work is performed safely and in accordance with site requirements for Integrated Safety Management. This could involve actions up to and including stopping work in accordance with

those site procedures.

(4) NNSA will insert a clause in such contracts substantially as follows–

H-___. TECHNICAL MONITOR

The Government may designate the Pantex Management and Operating Contractor as Technical Monitor for any right, duty or interest in this contract. In that event, the contractor shall fully cooperate with the Pantex Management and Operating Contractor for all matters under the terms of the designation.

(b) Appropriate adjustments may be made to the Contractor's Subcontracting Plan to recognize the changes to the subcontracting base and goals.

H.54 CONTRACTOR ASSURANCE SYSTEM

(Clause H.54 added per M117)

(a) The Contractor shall develop a Contractor Assurance System that is approved and monitored by the B&W Pantex, Board of Managers. The Contractor's Assurance System, at a minimum, shall have the following key attributes:

(1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.

(2) A Process for notifying the Contracting Officer of significant assurance system changes.

(3) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies. The Contractor is encouraged to seek third party certifications (such as Voluntary Protection Program (VPP) and ISO 9001 or ISO 14001), audits, peer reviews and independent assessments with external certification or validation.

(4) Identification and correction of negative performance, compliance, Integrated Safety Management (ISM), or Integrated Safeguards and Security Management (ISSM) trends before they become significant issues.

(5) A method for validating assurance processes.

(6) Integration of the assurance system with Contractor management systems including ISM and ISSM.

(7) A process for defining performance metrics and targets to assess performance, including benchmarking of key functional areas with other NNSA/DOE contractors and industry and research institutions to enhance processes and to assure development of performance metrics and performance targets that will result in achievement of best in class/industry performance where efficient and cost effective without compromising ISM or ISSM.

(8) Continuous feedback, including ISM and ISSM feedback, and performance improvement.

(9) An implementation plan that defines a transition period for the implementation to the Contractor Assurance System.

(10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

(b) The Contracting Officer will utilize internal and external reviews required by this clause as a significant factor in determining the adequacy of the Contractor's management systems. If the Contracting Officer determines that the Contractor is not fully complying with applicable laws or regulations or that performance has degraded and that the Contractor is not taking appropriate and timely corrective action, the Contracting Officer may take any action deemed necessary and reasonable under this Contract, including increasing oversight of the Contractor.

(c) NNSA will revise its oversight in accordance with the Section H contract clause entitled "NNSA Oversight" when the Contractor has demonstrated to the Contracting Officer's satisfaction that the Contractor Assurance System or components of the system are operating effectively.

H.55 NNSA OVERSIGHT

(Clause H.55 added per M117)

(a) The Contractor shall cooperate with NNSA oversight personnel, NNSA Facility Representatives, and subject matter experts in the performance of their assigned functions. NNSA reserves the right to inspect and oversee all activities of the Contractor at any time.

(b) <u>Oversight of Nuclear Facility Operations, Safeguards & Security, and Other High Hazard Activities</u> - For nuclear facility operations, safeguards & security, and other high hazard activities identified by the Contracting Officer, NNSA oversight shall be performed at the transaction level. The Contractor shall cooperate with NNSA oversight personnel, NNSA Facility Representatives, and subject matter experts in the performance of their assigned functions. If NNSA is

satisfied that the Contractor Assurance System is effective and has resulted in an improvement in the Contractor's performance in key functional areas, NNSA will consider conducting oversight at the systems level.

(c) Oversight of Non-Nuclear Facilities - Once the Contracting Officer is satisfied that the Contractor Assurance System is operating effectively, NNSA will conduct oversight of the Contractor's Non-Nuclear Facilities operations at the systems level. NNSA, with Contractor input, shall develop performance metrics and performance targets as the means of defining NNSA's performance level expectations of the Contractor.

(d) Oversight of Programs, Projects, and Business Systems - The Parties will identify key end products and services that the Contractor provides to the Nuclear Weapons Complex. Oversight of the Contractor shall focus on whether the Contractor meets the performance objectives, measures and targets in the Performance Evaluation Plan (PEP) and the performance metrics and targets in the Contractor Assurance System.

(e) If the Contractor fails to achieve a performance measure or target, the Contractor shall develop a recovery plan and NNSA may increase its oversight of these areas until performance is corrected.

H.56 ACCOUNTABILITY

(Clause H.56 added per M117)

The Contractor is responsible for the quality of its products and for assessing its operations, programs, projects and business systems and identifying deficiencies and implementing needed improvements in accordance with the terms and conditions of this Contract, regardless of whether NNSA has evaluated the Contractor's performance in any area of the Contract. The purpose of NNSA oversight is for assessing the Contractor's performance in meeting its obligations under this Contract. NNSA oversight shall not be relied upon by the Contractor in assessing its performance.

H.57 PERFORMANCE BASED MANAGEMENT

(Clause H.57 added per M117)

(a) Performance-Based Management System. This Contract is a management and operating contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives and performance incentives including multi-site performance incentives as described in the Contract's Section H Clause entitled "Performance Incentives," with measures and targets for each area established on a fiscal year basis and incorporated into the Performance Evaluation Plan.

(b) Performance Appraisal Process.

(1) Performance Evaluation Plan.

(i) A Performance Evaluation Plan shall be developed and finalized by the Contracting Officer, with Contractor input, prior to the scheduled start date of the appraisal period. The Performance Evaluation Plan shall document the process and associated performance objectives, performance incentives including multi-site performance incentives, award term incentives and associated measures and targets by which the Contractor's performance will be evaluated and rated. The Parties will attempt to reach mutual agreement on performance objectives, performance incentives including multi-site performance incentives, award term incentives and associated measures and targets that reflect expected business, operational and technical performance tied to key end products and NNSA/DOE strategic goals and objectives. The NNSA Pantex Site Office Manager reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The NNSA Administrator reserves the unilateral right to make the final decision on all award term incentives (including the associated measures and targets) used to evaluate Contractor performance.

(ii) Only the Contracting Officer may revise the Performance Evaluation Plan, consistent with the Contract's Statement of Work, during the appraisal period of performance. The Contracting Officer shall notify the Contractor:

(I) Of such bilateral changes at least sixty calendar days prior to the end of the affected appraisal period;

(II) Of such unilateral changes at least ninety calendar days prior to the end of the affected appraisal period and at least thirty calendar days prior to the effective date of the change; or

(III) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the appraisal period.

(2) Contractor Self-Assessment. The Contractor shall prepare an annual self-assessment of its performance against each of the performance objectives and incentives contained in the Performance Evaluation Plan. The annual

self- assessment shall be submitted within five-working days after the end of the appraisal period. The Contracting Officer will identify the structure and medium to be used by the Contractor in delivering its annual self-assessment.

H.58 PERFORMANCE INCENTIVES

(Clause H.58 added per M117)

(a) The NNSA shall, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements. Performance incentives shall include multi-site performance objectives across the Nuclear Weapons Complex with measurable performance outcomes on those areas of strategic value to NNSA.

(b) The Performance Incentive Fee determination will be made in accordance with the Performance Evaluation Plan. The determination as to the amount of Performance Incentive Fee earned is a unilateral determination made by the Fee Determining Official.

(c) The Contracting Officer will issue the Fee Determination Official’s final total Performance Incentive Fee amount earned determination, and the basis of the Performance Incentive Fee determination, in accordance with: the schedule set forth in the Performance Evaluation Plan; or as otherwise set forth in this Contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment report, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(d) Performance Incentive Fee not earned during the evaluation period shall not be allocated to future evaluation periods.

H. 59 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING INSTRUCTIONS

(Clause H.59 added per M151)

This contract involves contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at http://ofee.gov/Executive Order/Executive Order13423_main.asp . This requirement includes the Electronics Stewardship requirements of Implementing Instruction XII. When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

(End of Clause)

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SECTION I

PART II – CONTRACT CLAUSES

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Section I

Part II - Contract Clauses

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PART II – CONTRACT CLAUSE
(Modified in its entirety per M117)

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

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

Federal Acquisition Regulations	*http://www.arnet.gov/far/*
Federal Acquisition Forms	*http://www.gsa.gov/forms/farnumer.htm*
Department of Energy Acquisition Regulations	*http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/* *or* *http://farsite.hill.af.mil/vfdoe1.htm*

I.2 NOTICE – SECTION I CLAUSES INCORPORATED BY REFERENCE
(Modified M139)

The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). The following FAR and DEAR clauses are hereby incorporated by reference:

1. FAR (48 CFR CHAPTER 1) CLAUSES

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
*52.202-1	Definitions as modified by DEAR 952.202-1 (MAR 2002)	JUL 2004
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.203-6	Restrictions on Subcontractor Sales to the Government	JUL 1995
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price or Fee Adjustments for Illegal or Improper Activity	JAN 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 2003
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-7	Central Contractor Registration	OCT 2003
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	JAN 2005
52.211-5	Material Requirements	AUG 2000
52.211-15	Defense Priority Allocation Requirements	SEP 1990
52.215-8	Order of Precedence - Uniform Contract Format	OCT 1997
52.215-15	Pension Adjustments and Asset Reversions	OCT 2004
52.219-8	Utilization of Small Business Concerns	MAY 2004
52.219-9	Small Business Subcontracting Plan	JUL 2005
52.219-16	Liquidated Damages – Subcontracting Plan	JAN 1999

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52-219-25	Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting	OCT 1999
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	JUN 2003
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	JUL 2005
52.222-6	Davis-Bacon Act	JUL 2005
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	JUL 2005
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	JUL 2005
52.222-12	Contract Termination – Debarment	FEB 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	FEB 1988
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certification of Eligibility	FEB 1988
52.222-16	Approval of Wage Rates	FEB 1988

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.222-17	Labor Standards for Construction Work – Facilities Contracts	FEB 1988
52.222-20	Walsh-Healey Public Contracts Act	DEC 1996
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	APR 2002
52.222-29	Notification of Visa Denial	JUN 2003
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	DEC 2001
52.222-36	Affirmative Action for Workers With Disabilities	JUN 1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	DEC 2001
52.223-3	Hazardous Material Identification and Material Safety Data (Alternate I - JUL 1995)	JAN 1997
**52.223-5	Pollution Prevention and Right-To Know Information (Alternate I – AUG 2003)	AUG 2003
52.223-6	Drug-Free Workplace	MAY 2001
**52.223-10	Waste Reduction Program	AUG 2000
52.223-12	Refrigeration Equipment and Air Conditioners	MAY 1995
52.223-14	Toxic Chemical Release Reporting	AUG 2003

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.224-1	Privacy Act Notification	APR 1984
52.224-2	Privacy Act	APR 1984
52.225-1	Buy American Act – Supplies	JUN 2003
52.225-8	Duty-Free Entry	FEB 2000
52.225-13	Restrictions on Certain Foreign Purchases	FEB 2006
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises	JUN 2000
52.227-3	Patent Indemnity	APR 1984
52.227-10	Filing of Patent Applications – Classified Subject Matter	APR 1984
52.227-23	Rights to Proposal Data (Technical)	JUN 1987
*52.229-8	Taxes - Foreign Cost-Reimbursement Contracts	MAR 1990
*52.229-10	State of New Mexico Gross Receipts and Compensating Tax as Modified by DEAR 970.2904-1(a)	APR 2003
52.230-2	Cost Accounting Standards	APR 1998
52.230-6	Administration of Cost Accounting Standards	APR 2005
52.232-17	Interest	JUN 1996
52.232-18	Availability of Funds	APR 1984

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.232-24	Prohibition of Assignment of Claims	JAN 1986
52.233-1	Disputes - Alternate I (DEC 1991)	JUL 2002
52.233-3	Protest After Award (Alternate I - JUN 1985)	AUG 1996
52.233-4	Applicable Law For Breach of Contract Claim	OCT 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	APR 1984
52.237-3	Continuity of Services	JAN 1991
52.242-1	Notice of Intent to Disallow Costs	APR 1984
52.242-13	Bankruptcy	JUL 1995
52.244-5	Competition in Subcontracting	DEC 1996
52.244-6	Subcontracts for Commercial Items	FEB 2006
52.247-1	Commercial Bill of Lading Notations	APR 1984
52.247-63	Preference for U.S.-Flag Air Carriers	JUN 2003
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	FEB 2006
52.249-6	Termination (Cost-Reimbursement) as Modified by DEAR 970.4905-1(b)	MAY 2004
52.249-14	Excusable Delays	APR 1984
52.250-1	Indemnification under Public Law 85-804 (Alternate I – APR 1984)	APR 1984

FAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
52.251-1	Government Supply Sources	APR 1984
52.251-2	Interagency Fleet Management Systems (IFMS) Vehicles and Related Services	JAN 1991
52.253-1	Computer Generated Forms	JAN 1991

*See Clause 52.252-4, "Alterations in Contract (APR 1984)."
**Content of Clause Updated - Modification M151

2. DEAR (48 CFR CHAPTER 9) CLAUSES

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
952.203-70	Whistleblower Protection for Contractor Employees	DEC 2000
952.204-2	Security	MAY 2002
952.204-70	Classification/Declassification	SEP 1997
952.204-71	Sensitive Foreign Nations Controls	APR 1994
952.204-75	Public Affairs	DEC 2000
952.208-7	Tagging of Leased Vehicles	APR 1984
952.209-72	Organizational Conflicts of Interest (Alternate I – JUL 1997)	JUN 1997
952.211-71	Priorities and Allocations (Atomic Energy)	JUN 1996
*952.215-70	Key Personnel	DEC 2000
952.217-70	Acquisition of Real Property	APR 1984

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
952.219-70	DOE Mentor-Protégé Program	MAY 2000
952.223-75	Preservation of Individual Occupational Radiation Exposure Records	APR 1984
952.224-70	Paperwork Reduction Act	APR 1994
952.226-74	Displaced Employee Hiring Preference	JUN 1997
952.247-70	Foreign Travel	DEC 2000
952.251-70	Contractor Employee Travel Discounts	DEC 2000
*970.5203-1	Management Controls (DEVIATION)	DEC 2000
970.5203-2	Performance Improvement and Collaboration	MAY 2006
970.5203-3	Contractor's Organization	DEC 2000
970.5204-1	Counterintelligence	DEC 2000
970.5204-2	Laws, Regulations, and DOE Directives	DEC 2000
970.5204-3	Access to and Ownership of Records	DEC 2000
970.5208-1	Printing	DEC 2000
970.5215-3	Conditional Payment of Fee, Profit, and Incentives – Facility Management Contracts	JAN 2004
*970.5215-4	Shared Savings (Deviation)	JAN 2005

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5217-1	Work for Others Program (Non-DOE Funded Work)	JAN 2005
970.5222-1	Collective Bargaining Agreements – Management and Operating Contracts	DEC 2000
970.5222-2	Overtime Management	DEC 2000
970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution	DEC 2000
**970.5223-2	Affirmative Procurement Program	MAR 2003
970.5223-4	Workplace Substance Abuse Programs at DOE Sites	DEC 2000
**970.5223-5	DOE Motor Vehicle Fleet Fuel Efficiency	OCT 2003
970.5226-1	Diversity Plan	DEC 2000
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993	DEC 2000
970.5226-3	Community Commitment	DEC 2000
*970.5227-2	Rights in Data-Technology Transfer (ALTERNATE I DEC 2000) (DEVIATION)	DEC 2000
*970.5227-3	Technology Transfer Mission (DEVIATION)	AUG 2002
970.5227-4	Authorization and Consent	AUG 2002
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement	AUG 2002
970.5227-6	Patent Indemnity – Subcontracts	DEC 2000

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5227-8	Refund of Royalties	AUG 2002
970.5227-9	Notice of Right to Request Patent Waiver	DEC 2000
*970.5227-12	Patent Rights Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (Alternate I – DEVIATION)	AUG 2002
970.5228-1	Insurance – Litigation and Claims	MAR 2002
970.5229-1	State and Local Taxes	DEC 2000
970.5231-4	Preexisting Conditions (Alternate I DEC 2000) (Alternate II DEC 2000)	DEC 2000
970.5232-1	Reduction or Suspension of Advance, Partial, or Progress Payments	DEC 2000
970.5232-2	Payments and Advances (Alternate III DEC 2000)	DEC 2000
*970.5232-3	Accounts, Records, and Inspections (Alternate II DEC 2000)(DEVIATION)	DEC 2000
970.5232-4	Obligation of Funds	DEC 2000
970.5232-5	Liability with Respect to Cost Accounting Standards	DEC 2000
970.5232-6	Work for Others Funding Authorization	DEC 2000
970.5232-7	Financial Management System	DEC 2000
970.5232-8	Integrated Accounting	DEC 2000
970.5237-2	Facilities Management	DEC 2000

DEAR NUMBER	CLAUSE TITLE	DATE OF CLAUSE
970.5242-1	Penalties for Unallowable Costs	DEC 2000
970.5243-1	Changes	DEC 2000
970.5244-1	Contractor Purchasing Systems (DEVIATION)	DEC 2000
970.5245-1	Property	DEC 2000

*See Clause 52.252-4, "Alterations in Contract (APR 1984)."
**Content of Clause Updated - Modification M151

I.3 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR2002)

(a) Definitions.

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

"Federal helium supplier" means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

"Major helium requirement" means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements.

(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier-

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

(c) *Subcontracts*. The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

I.4 FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

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

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment. If you do not want to pay that portion of dues or fees used to support

activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)
To locate the nearest NLRB office, see NLRB's website at http://www.nlrb.gov

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at http://www.olms.dol.gov; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase

order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

I.5 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either

(1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall --

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

I.6 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED PRODUCTS (AUG 2000)

(a) Definitions. As used in this clause—

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

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

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to _____ [*Contracting Officer complete in accordance with agency procedures*].

I.7 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II , including, but not limited to hydrochlorofluorocarbons.

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

Warning

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

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

I.8 FAR 52.225-9 BUY AMERICAN ACT–CONSTRUCTION MATERIALS (JAN 2005)

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

"Component" means an article, material, or supply incorporated directly into a construction material.

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

"Cost of components" means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means--

(1) An unmanufactured construction material mined or produced in the United States; or

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

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

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: _____ [*Contracting Officer to list applicable excepted materials or indicate ``none''*]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not

reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*]
[*Include other applicable supporting information.*]
[**Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

I.9 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid –

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

U.S. Department of Energy
National Nuclear Security Administration
Pantex Site Office Contracting Officer
P.O. Box 30030
Amarillo, TX 79120-0030

I.10 FAR 52.252-4 ALTERATIONS IN CONTRACT (APR 1984)

Portions of this Contract are altered as follows:

FAR 52.202-1 DEFINITIONS (JUL 2004) AS MODIFIED BY DEAR 952.202-1 (MAR 2002)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless–

(1) The solicitation, or amended solicitation, provides a different definition;

(2) The contracting parties agree to a different definition;

(3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at http://www.acqnet.gov at the end of the FAR, after the FAR Appendix.

(c) The term Head of Agency means:

(1) The Secretary

(2) Deputy Secretary

(3) Under Secretaries of the Department of Energy

(4) Chairman, Federal Energy Regulatory Commission

(d) The term DOE means the Department of Energy, FERC means the Federal Energy Regulatory Commission, and NNSA means the National Nuclear Security Administration.

(e) The term Senior Procurement Executive means, for DOE:

Department of Energy - Director, Office of Procurement and Assistance Management, DOE

National Nuclear Security Administration - Administrator for Nuclear Security, NNSA; and
Federal Energy Regulatory Commission - Chairman, FERC.

FAR 52.229-8 TAXES - FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of * *[insert name of the foreign government]*, or from which the Contractor or any subcontractor under this Contract is exempt under the laws of * *[insert name of country]*, shall not constitute an allowable cost under this Contract.

*To be specified in applicable Task Assignment(s).

FAR 52.229-10 STATE OF NEW MEXICO GROSS RECEIPTS TAX AND COMPENSATING TAX (OCT 1988)

Paragraphs (c), (f), and (g) are revised to insert "U.S. Department of Energy" in the blanks.

DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

The personnel listed below or elsewhere in this contract (see Contract Section J Appendix entitled "Key Personnel") are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance;

(2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

(3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

DEAR 970.5203-1 MANAGEMENT CONTROLS (DEC 2000) (DEVIATION)
(Modified M139)

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

expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

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

(3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. *Annually, or at other intervals directed by the contracting officer, the contractor shall supply to the contracting officer copies of the reports reflecting the status of recommendations that result from audits of business, financial, or management controls performed by its internal audit activity and any other audit activity.*

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

DEAR 970.5215-4 COST REDUCTION (DEC 2000)

Has been revised as follows:

DEAR 970.5215-4 SHARED SAVINGS (JAN 2005)

(a) **General.**

NNSA's facilities and laboratories must be operated in an efficient and effective manner. The Contractor shall assess its operations and identify areas where cost and operational efficiencies arising from, for example, innovative product designs, process improvements, supply chain management initiatives, or integration of life cycle cost approaches for the

design and development of systems that minimize maintenance and operations costs can bring cost efficiencies to its operations without adversely affecting the level of performance required by the contract.

(b) **Definition.**

"Shared savings" means a reduction in the total amount of the cost of performing the effort where the savings revert to NNSA direction or control and may be available for other program priorities. Shared savings can result from a design, process, method change, or other initiative occurring in the fiscal year in which the change is accepted and may apply in subsequent fiscal years. They are the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort using an approved revised approach intended to reduce costs. Savings resulting from formal or informal direction given by NNSA or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not share savings and do no qualify for incentive sharing.

(c) **Shared savings proposals (S2P).**

S2Ps shall be submitted to the Contracting Officer and shall contain:

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

(2) New Method (New Proposed Baseline) – A description how the initiative will be accomplished, the new scope of work, detailed cost/price estimate, and schedule with supporting documentation.

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

(4) The proposed contractual arrangement.

(5) A discussion of the extent to which acceptance of the S2P may:

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

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

(iii) Request a change in other contractual agreements;

(iv) Result in significant organizational or personnel impacts;

(v) Create a negative impact on the cost, schedule, or scope of work in another area or to other contractors in the NNSA Complex; and

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

S2Ps that may exceed $5M in savings shall be submitted through the Contracting Officer to the Senior Procurement Executive, NNSA.

(d) **Acceptance or Rejection of S2P.**

Acceptance or rejection of an S2P is a unilateral determination of the Contacting Officer. The Contracting Officer will notify the Contractor that an S2P has been accepted, rejected, or deferred within (Insert Number) days after receipt. To be acceptable, an S2P must:

(1) Result in net savings (in the sharing period if a design, process, or method change);

(2) Not reappear as costs in subsequent periods; and

(3) Not result in impairment of essential functions.

(e) **Sharing Arrangement.**

If an S2P is accepted, the Contractor may share in the net savings. For an S2P negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall not to exceed 25% of the shared net savings, unless approved in advance by the Senior Procurement Executive. The specific percentage and sharing period will be set forth in the contractual document.

(f) **Subcontracts.**

The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in an S2P under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any S2P incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor

S2P incentive payments, provided that the payments do no reduce NNSA's share of net savings.

DEAR 970.5227-2 RIGHTS IN DATA - TECHNOLOGY TRANSFER (DEC 2000)

Has been revised as follows:

DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000) (ALTERNATE I) (DEC 2000) (DEVIATION)

(a) Definitions.

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

(2) Computer software, as used in this clause, means

(i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and

(ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

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

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

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any

such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (*i*) of this clause.

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

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

(8) Open Source Software, as used in this clause, means computer software that is distributed under a license under which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).

(b) Allocation of Rights.

(1) *Except as may be otherwise expressly provided or directed in writing by the NNSA Patent Counsel, the* Government shall have:

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

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

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

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct 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 (*h*) of this clause ("Rights in Limited Rights Data") or paragraph (*i*) of this clause ("Rights in Restricted Computer Software"); and

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

(2) The Contractor shall have:

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

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

provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

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

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable

copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first

produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release

(A) would be detrimental to national security, i.e., involve classified information or data or sensitive information

under section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes,

(B) would not enhance the appropriate transfer or dissemination and commercialization of such data,

(C) would have a negative impact on U.S. industrial competitiveness,

(D) would prevent DOE from meeting its obligations under treaties and international agreements, or

(E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either

give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefore.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) An abstract describing the software suitable for publication,

(B) the source code for each software program, and

(C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five-year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-

up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. DE-AC04-00AL66620 with the Department of Energy. For (period approved by Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor

or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65-"Appeals."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(5) A similar notice can be used for data, other than computer software, upon approval of Patent Counsel.

(f) OPEN SOURCE SOFTWARE. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source license (hereinafter referred to as "Open Source Software" or "OSS"), subject to the following:

(1) Obtain Program Approval.

(i) The Contractor shall ensure that the DOE/NNSA Program or Programs that have provided funding to develop the software have approved the distribution of the software as OSS. A DOE/NNSA Program may provide blanket approval for all software developed with funding from that Program. If approval from a DOE/NNSA Program is not practicable, NNSA Patent Counsel may provide approval. Either the Contractor or CRADA Participant may assert copyright in OSS developed under a CRADA, which precludes marking such OSS as Protected CRADA Information.

(ii) If the software is developed with funding from a federal government agency other than DOE, then, authorization from the funding source shall be obtained for OSS release, if practicable. Such federal government agency may provide blanket approval for all software developed with funding from that agency. If approval

from such federal government agency is not practicable, NNSA Patent Counsel may provide approval.

(2) Assert Copyright in the OSS. Once the Contractor has obtained Program approval in accordance with subparagraph (1) of this section, the Contractor may assert copyright in the software to be distributed as OSS.

(3) Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE/NNSA) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.

(4) OSS LOG. The Contractor must maintain a log, available for inspection by DOE, of software distributed as OSS. The log shall contain the following information:

(i) name of the computer software (or other identifier),

(ii) an abstract with description or purpose of the software,

(iii) evidence of DOE/NNSA Program approval,

(iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below);

(v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered;

(vi) the type of OSS license used; and

(vii) release version of the software for OSS containing derivative works. Upon request of DOE/NNSA Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the log.

(5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible via the Contractor's website, Open Source Bulletin Boards operated by third parties, ESTSC or other industry standard means.

(6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose an industry standard OSS license or

create a Contractor standard license. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property and/or NNSA Patent Counsel may periodically issue guidance on OSS licenses. The OSS license, must contain, at a minimum, the following provisions:

(i) A disclaimer that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software;

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (9) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions; and

(iii) Collection of administrative costs is allowed. However, the Contractor may not collect a royalty or other fee in excess of good faith amount for cost recovery from any licensee for the Contractor's OSS.

(7) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled "Technology Transfer Mission" (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.

(8) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews.

(9) Determine if Trademark Protection for the OSS is Appropriate. DOE/NNSA Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the DOE/NNSA Program or the Contractor may want to seek trademark protection. If the OSS is

protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.

(10) Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(11) Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is made publicly available by Contractor. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the original OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) 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 *NNSA* 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 *NNSA* Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE/*NNSA*.

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

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

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

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

(h) 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 below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. DE-AC04-00AL66620 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:

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

(2) 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;

(3) 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;

(4) 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

(5) 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.

(i) 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. DE-AC04-00AL66620. 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:

(i) 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;

(ii) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) 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

(v) 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.

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

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. DE-AC04-00AL66620 with B&W Pantex.

(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."

(j) 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.

DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002)

Has been revised as follows:

DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) (DEVIATION)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

(1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Pantex Plant, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Pantex Plant consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy

Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to identifying and protecting Intellectual Property made, created, or acquired at or by the Pantex Plant; negotiating licensing agreements and assignments for Intellectual Property made, created, or acquired at or by the Pantex Plant that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory weapon production user facilities or Pantex Plant . It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.

(b) Definitions.

(1) Contractor's General Manager means the individual who has supervision over all or substantially all of the Contractor's operations at the Pantex Plant.

(2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Pantex Plant, and one or more parties including at least one non-Federal party under which the Government, through its Pantex Plant, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Pantex Plant ; except that such term does not

include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's General Manager or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) Assignment means any agreement by which the Contractor transfers ownership of Pantex Plant Intellectual Property, subject to the Government's retained rights.

(6) Pantex Plant Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Pantex Plant employees or through the use of Pantex Plant research facilities.

(7) Pantex Plant Tangible Research Product means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and

(iii) were made under this contract by Pantex Plant employees or through the use of Pantex Plant research facilities.

(8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Pantex Plant Biological Materials or Pantex Plant Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) Allowable Costs.

(1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work for Others) of the Pantex Plant for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance-Litigation and Claims" of this contract.

(d) Conflicts of Interest-Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to all persons participating in Pantex Plant research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-federal sponsors

and, for CRADA activity, in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE/NNSA projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE/NNSA-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE/NNSA or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer, prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Pantex Plant employee within the previous two years or to the company in which the individual is a principal;

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and

(10) Notify NNSA prior to Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or DOE/NNSA program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Pantex Plant and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness for Licensing and Assignments of Intellectual Property.

(1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, the Contractor shall give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Pantex Plant intellectual property where the Pantex Plant obtain rights during the course of the Contractor's operation of the Pantex Plant under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity-Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income.

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Pantex Plant , consistent with the research and development mission and objectives of the Pantex Plant and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Pantex Plant ' budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Pantex Plant Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Pantex Plant, and at the end of the year, provide a separate

accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall notify the contracting officer of any changes to its policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer, which changes shall be subject to the approval of the contracting officer.

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Pantex Plant shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Pantex Plant, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology Transfer Affecting the National Security.

(1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable NNSA to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. NNSA shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and NNSA shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the NNSA and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer, to enable NNSA to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and NNSA and in such a format which will serve to adequately inform NNSA of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE/NNSA's reporting to Congress, the Contractor is required to submit annually to NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Pantex Plant innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Pantex Plant Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer Through Cooperative Research and Development Agreements. Upon approval of the contracting officer, and as provided in a DOE/NNSA approved Joint Work Statement (JWS), the General Manager, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. Also, under such circumstances as the DOE/NNSA considers appropriate, the DOE/NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.

(1) Review and Approval of CRADAs.

(i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's General Manager or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer, in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's General Manager or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) Selection of Participants. The Contractor's General Manager or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iii) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data.

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5)years from the time the data is first produced. The DOE/NNSA shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE/NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Work For Others and User Facility Programs.

(i) WFO and User Facility Agreements (UFAs) are available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing

technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith, when conditions associated with the activity under the agreement can appropriately be performed under such an alternative form.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with NNSA approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE/NNSA class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) Conflicts of Interest.

(i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee-

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned

by the contractor for inventions made at the Pantex Plant, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's Pantex Plant staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Pantex Plant, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE/NNSA, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, ADVANCE CLASS WAVIER (AUG 2002) ALTERNATE I

Alternate I has been revised as follows:

DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE 1 (DEVIATION)

(a) Definitions.

(1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR, Part 781.

(2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR, Part 784.

(3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy/National Nuclear Security Administration to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

(4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(6) Patent Counsel means National Nuclear Security Administration (NNSA) Patent Counsel assisting the contracting activity.

(7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(9) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights.

(1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Advance class waiver of Government rights to the Contractor. DOE/NNSA may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, including weapons related subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. The Contractor does not have a right to retain title to any weapons related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet as enumerated in the Class Waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE/NNSA, and DOE/NNSA may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in

subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) uranium enrichment technology;

(B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.

(6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified in the Contract Section J Appendix entitled “All In Force Bilateral Agreements.” DOE/NNSA reserves the

right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE/NNSA patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) Government assignment of rights in Government employees' subject inventions. If a DOE/NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE/NNSA may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE/NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license

provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE/NNSA employee.

(c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.

(1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:

(i) the contract number under which the subject invention was made;

(ii) the inventor(s) of the subject invention;

(iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) the date and identification of any publication, on sale or public use of the invention;

(v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) all sources of funding by Budget and Resources (B&R) code; and

(viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE/NNSA under this paragraph are deemed made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1 year statutory period.

(4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the

subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

(i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.

(7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR, Part 40.

(d) Conditions When the Government May Obtain Title Notwithstanding an Advance Class Waiver.

(1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE/NNSA may acquire such title or

rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.

(2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

(3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.

(4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.

(5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum Rights of the Contractor.

(1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's

request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR, Part 404, and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR, Part 404, and DOE/NNSA licensing regulations.

(f) Contractor Action to Protect the Government's Interest.

(1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE/NNSA all instruments necessary to accomplish the following actions:

(i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) convey title in a subject invention to DOE/NNSA pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Contractor procedures for reporting subject inventions to DOE/NNSA. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE/NNSA. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

(5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following

statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/National Nuclear Security Administration. The Government has certain rights in the invention."

(6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) DOE/NNSA approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.

(8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) Subcontracts.

(1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all

subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.

(3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

(4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) Reporting on Utilization of Subject Inventions. Upon request by DOE/NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE/NNSA. Upon request by DOE/NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE/NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE/NNSA agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE/NNSA may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE/NNSA may, in accordance with the procedures in the DOE/NNSA patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA determines that:

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) Reports.

(1) Interim reports. Upon DOE/NNSA's request, the Contractor shall submit to DOE/NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE/NNSA in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) Final reports. Upon DOE/NNSA's request, the Contractor shall submit to DOE/NNSA, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this

contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility

(1) to practice or have practiced by or for the Government at the facility, and

(2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) Atomic Energy.

(1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) Classified Inventions.

(1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of Records Relating to Inventions.

(1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE/NNSA may require the Contractor to submit to DOE/NNSA a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE/NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements

as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE/NNSA policy.

(t) 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 interest of DOE/NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the NNSA Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the NNSA Patent Counsel has read only access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.

(u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE/NNSA relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE/NNSA shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) (DEVIATION)

(a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee

accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General.

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

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

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(i) Internal audit. The contractor agrees to establish an internal audit activity and provide the following reports:

(1) Internal Audit Implementation Design. Within thirty (30) days of contract award and each 5th year of contract performance or upon the exercise of any contract option or the extension of the contract, the contractor shall submit to the contracting officer an Internal Audit Implementation Design to include the overall strategy for the audit activity. The Implementation Design will describe (i) the audit activity's placement within the contractor's organization including reporting requirements; (ii) its size and the experience and educational standards of the audit staff; (iii) its relationship to the corporate parent(s) of the contractor; (iv) the standards used to audit; (v) an overall audit strategy for relevant performance period of this contract, considering particularly the method of auditing costs incurred in the performance of the contract; (vi) the intended use of external audit resources; (vii) the plan for audit, both pre-award and post-award of subcontracts; and (viii) the schedule of peer review of the internal audit activity by other DOE contractor internal audit activities.

(2) Annual Audit Report. By each January 31 of the contract performance period, the contractor shall submit an annual audit report, providing a

summary of the audit activities undertaken during the previous fiscal year and their results.

(3) Annual Audit Plan. By each June 30 of the contract performance period, the contractor shall submit to the contracting officer an annual audit plan that reflects the activities to be undertaken during the next fiscal year. The contractor shall design the Annual Audit Plan to tests the costs incurred and contractor management systems described in the internal audit design.

(4) Contracting officer's satisfaction. The design of the internal audit activity submitted under subparagraph (1), the annual report submitted under subparagraph (2), and the annual audit plan submitted under subparagraph (3) shall be satisfactory to the contracting officer.

(j) Statement of Costs Incurred and Claimed. At any time during contract performance, should the contracting officer determine that the costs incurred are unallowable to an extent to cause him or her to lose confidence in the contractor's management controls or the contractor's management systems that validate the costs incurred and claimed, the contracting officer may, in his or her sole discretion, impose conditions upon the contractor's use of the special financial institution account or use of the Statement of Costs Incurred and Claimed in whole or in part, including direction that specific types of costs be claimed by periodic vouchering. This action shall not relieve the contractor from any obligation to perform its obligations under this contract. In addition, the contracting officer may direct the contractor to pay the Government an amount equal to the unallowable costs or payments improperly made and take any other action or combination of actions provided in this contract, at law, or //in equity. (Modified M139)

DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000) (DEVIATION)
(Added M139)

(a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the

purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) Acquisition of Utility Services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

(c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) Audit of Subcontractors.

(1) The contractor shall provide for:

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability

or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-2 and 48 CFR 970.3102-21(b).

(f) Bonds and Insurance.

(1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of $100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed price, unit-priced and cost-reimbursement construction subcontractors in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-*1 (May 2002), as amended by AL 2002-06* and 48 CFR 52.225-*9 (May 2002), as amended by AL 2002-06*. The contractor shall forward determinations of nonavailability of individual items to

the DOE contracting officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) Construction and Architect-Engineer Subcontracts.

(1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest.

(i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.

(n) *[Removed and Reserved]*

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:

(1) Motor vehicles--48 CFR 908.7101

(2) Aircraft--48 CFR 908.7102

(3) Security Cabinets--48 CFR 908.7106

(4) Alcohol--48 CFR 908.7107

(5) Helium--48 CFR 908.7108

(6) Fuels and packaged petroleum products--48 CFR 908.7109

(7) Coal--48 CFR 908.7110

(8) Arms and Ammunition--48 CFR 908.7111

(9) Heavy Water--48 CFR 908.7121(a)

(10) Precious Metals--48 CFR 908.7121(b)

(11) Lithium--48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped--41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions--41 CFR 101-26.702

(r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;

(2) when lease renewals are being considered; and

(3) at other times as circumstances warrant.

(s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in FAR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR 1017.

(x) Subcontract Flowdown requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(y) Legal Services. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

I.11 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 _____. *[insert regulation name]* (48 CFR _____) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.12 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT. 2005)

(a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions.* The definitions set out in the Act shall apply to this clause.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.

(d) (1) *Indemnification.* To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of risk; or
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which

contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor

or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts.* The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) *Effective date*. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

(m) *Relationship to general indemnity*. To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply."

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J

LIST OF ATTACHMENTS

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PART III

SECTION J

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

LIST OF ATTACHMENTS

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As of October 1, 2008

REIMBURSEMENT AUTHORIZATIONS

RA #	Description	Date Approved	Effective Date
#1	Service Recognition	Nov. 18, 2001	Oct. 1, 2001
#2	Service Recognition	Aug. 27, 2001	Jun, 22, 2001
#3	Overtime Pay Program	Mar. 3, 2004	Jan. 1, 2004
#4	Employment Policies	Dec. 24, 2003	Jan. 1, 2004
#5	Non-Bargaining Certification Pay	Feb. 16, 2004	Mar. 2, 2004
#6	Non-Bargaining Labor Pool Pay	Feb. 16, 2004	Mar. 2, 2004
#7	Joint Technical Operating Team on Call Pay	Jun, 3, 2004	Oct. 1, 2003
#8	Personal Leave	Jul. 8, 2004	Jul. 1, 2004
#9	Defined Contribution Savings Plan MTC 401(k) Contributions	Mar. 21, 2005	Mar. 1, 2003
#10	Vacation Leave Donation	May 4, 2005	Oct. 1, 2004
#11	Compensation During Suspension of Access Authorization	May 9, 2005	May 2, 2005
#12	Retirement Changes for Nonbargaining Employees Who Carry a Weapon	May 4, 2005	Mar. 18, 2002
#13	Professional Fees, Dues, Licenses, and Certifications	May 19, 2005	Oct. 1, 2004
#14	Personnel Temporarily Assigned From Contract Work	Sep. 7, 2005	Sept. 1, 2005
#15	Working Sixteen (16) or More Consecutive Hours	Nov. 17, 2005	Dec. 1, 2005
#16	Non-Bargaining Sick Leave Admin	Nov 1, 2005	Nov. 1, 2005
#17	Leave of Absence – Family and Medical Leave Act (FMLA)	Jan. 18, 2006	Nov 1, 2005
#18	Revision to Benefits Program – Company Affiliation Definition	Feb. 8, 2006	Dec. 19, 2005
#19	Working Sixteen (16) or More Consecutive Hours	Feb. 8, 2006	Feb. 8, 2006
#20	Military Leave	Sep. 26, 2007	Sep. 30, 2007
#21	Miscellaneous Human Resource Programs	Jun. 11, 2007	Jun. 11, 2007
#22	Educational Assistance	Oct. 31, 2007	Oct. 31, 2007
#23	Revision 1, Benefits Program	Nov. 20, 2007	Jul. 2, 2007
#24	Educational Assistance	Oct. 22, 2007	Oct. 22, 2007
#25	Retirement Awards	Jan. 30, 2008	Oct. 1, 2007
#26	Exempt Overtime	Mar. 14, 2008	Feb. 25, 2008
#27	Safety & Health Awareness Programs	Aug. 8, 2008	Apr 25, 2008

APPENDIX A – PERSONNEL APPENDIX
B&W PANTEX

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APPENDIX A – PERSONNEL APPENDIX
B&W PANTEX

INTRODUCTION

This Personnel Appendix sets forth those Contractor Human Resource Management policies and related expenses that have cost implications under the contract, and identifies those costs deemed reasonable and allowable for reimbursement when incurred in the performance of the Contract work. Only those items of personnel costs and related expenses that are set forth herein or specifically referenced in this Personnel Appendix are allowable costs by advance understanding under this Contract to the extent that these costs do not conflict with any other contract clause.

The Contractor shall select, manage, and direct the workforce. The Contractor shall use effective management review procedures and internal controls to assure that the allowable costs set forth herein are not exceeded, and that cost items which require prior approval of the Department of Energy (DOE) Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request that this Personnel Appendix be revised and the parties hereto agree to give consideration in good faith to any such request. Revisions to the Personnel Appendix shall be accomplished by executing a Reimbursement Authorization (DOE Form AD-36) as approved by the Contracting Officer or designated representative. When revisions to this Personnel Appendix are agreed upon, revised pages will be issued reflecting such changes and will bear the effective date of such changes and the Reimbursement Authorization number in the upper right-hand corner of each page.

The Personnel Appendix is adopted for the exclusive benefit and convenience of the parties hereto, and nothing contained herein shall be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any third party.

The Contractor shall promptly furnish all reports and information required or otherwise indicated in this Appendix to the Contracting Officer.

DEFINITIONS

Base Pay. For nonexempt employees, the rate of pay per hour exclusive of any premium, established for each job classification in accordance with the approved compensation program or collective bargaining agreements.

Base Pay. For exempt employees, the amount of pay per month established for each job classification in accordance with the approved compensation program.

Basic Workweek. A fixed and regularly occurring period of 168 hours, (7) consecutive 24-hour periods. The basis for computing overtime for work occurring beyond 40 hours, unless specified elsewhere.

Contractor. Babcock & Wilcox Technical Services Pantex, LLC (B&W Pantex)

DEAR. Acronym for the Department of Energy Acquisition Regulation.

DOE. The United States Department of Energy.

Employee. A person hired by and working for the Contractor.

Exempt Employee. Executive, administrative, and professional employees who are exempt from certain provisions of the Wage and Hour laws.

FAR. Acronym for the Federal Acquisition Regulation.

FTR. Acronym for Federal Travel Regulation, as it applies to the Federal Civilian Employee and Contractor Travel Expense Act of 1985.

General Manager. Means the Contractor General Manager in charge of the DOE contract work.

PGU Employees. Acronym for nonexempt employees covered by the Articles of Agreement between the Contractor, B&W Pantex, and the Pantex Guard Union **(RA#4)**

Immediate Family. Immediate family members include husband, wife, son, daughter, mother, father, mother-in-law, father-in-law, sister, brother, sister-in-law, brother-in-law, grandmother, grandfather, grandchildren, step-children, son-in-law, and daughter-in-law. Payment may be made where the deceased relative is not a member of the immediate family as defined above, but served in the place of a parent to the employee, subject to approval of the HR Manager**. (RA#4)**

MTC Employees. Acronym for nonexempt employees of the site contractor who are covered by the Articles of Agreement between the Pantex Site Contractor and Metal Trades Council of Amarillo, Texas and Vicinity, A.F. of L. - C. I. O.

NENB Employees. Acronym for nonexempt/nonbargaining employees who are covered under and are subject to the provisions of Wage and Hour laws. These employees are nonexempt and are not covered by a collective bargaining agreement.

Regular Scheduled Shift. The normal hours of working time in each payroll day established for each employee.

Salary Increase. An increase in salary of an employee within the established rate range of the employee's job classification, which is granted consistent with the provisions of the approved compensation program.

Training. Instruction designed to develop or improve job performance by increasing knowledge or understanding, develop skills, or change behavior; carried out in response to a clearly identified need for which clear and measurable objectives have been derived.

I. COMPENSATION SYSTEM

A. Policy/Objectives.

1. The purpose of the Contractor compensation system is to facilitate the achievement of organizational objectives and support business strategies of DOE and the Contractor. The programs are designed and administered to attract, retain and motivate a competent and productive workforce that supports the mission at the Pantex Plant. The programs will apply to exempt and nonexempt/nonbargaining (NENB) employees and shall be:

    a. Internally equitable — to meet this criterion, the employer establishes pay levels that correspond to each job's relative value to the organization.

    b. Externally equitable — to meet this criterion, the employer establishes pay levels that correspond to those prevailing in relevant external markets for employees' positions.

    c. Compliant with all applicable laws and regulations.

2. The Compensation System program costs directly attributable to compensation provided to Contractor employees will be allowable under this Appendix A.

B. Exempt and Nonexempt/Nonbargaining Compensation Programs.

The Contractor shall:

1. Design compensation programs so that they include the following components:

    a. Philosophy and strategy for all pay delivery programs.

    b. System for establishing a job worth hierarchy.

    c. System for job documentation, including the establishment of job descriptions for each job classification.

    d. Method for relating internal job worth hierarchy to external market.

    e. System which links individual and/or group performance to compensation decisions.

    f. Method for planning and monitoring the expenditure of funds.

g. Method for assuring compliance with applicable laws and regulations.

h. System for communicating the programs to employees.

i. System for internal controls and self-assessment.

2. Obtain DOE approval for the initial Compensation Program design. The major compensation program design elements are:

   a. Internal job evaluation system.

   b. External market pricing system.

   c. Performance management system.

   d. System for controlling the expenditure of funds.

3. Obtain DOE approval for proposed changes to the major compensation program design elements prior to implementation.

4. Obtain DOE approval for the annual Compensation Increase Plan (CIP) and Salary Ranges.

   a. The CIP budget period will be the 12-month period from January 1 through December 31 of each year.

   b. The proposed CIP totals will be expressed as a percentage of the payroll for the end of the previous plan year. The total amount of salary increases granted during the budget period shall not exceed the approved funds. In no event shall any unexpended portion of the CIP established for one budget period be carried into the succeeding budget period.

   c. All pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

   d. Specific employee groups (e.g., exempt, nonexempt/nonbargaining) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the DOE.

   e. DOE may adjust the unexpended balance of the CIP amount based on major changes such as a significant reduction in Contractor

employment levels, as in a reduction in force or drastic changes in the competitive labor market which significantly affect the CIP amount.

5. Obtain DOE approval for individual compensation of the General Manager and the Deputy General Manager. These actions shall be submitted to DOE on a Compensation Approval Form, DOE F 3220.5 at least forty-five (45) days in advance of the proposed effective date of the action. DOE shall exert its best efforts to process the approval determination within the forty-five (45) day period; in the event the approval determination is not provided within forty-five (45) days, subsequent approval shall be made retroactive to the effective date proposed by the Contractor.

6. Obtain DOE approval for any proposed salary amount paid an employee in excess of the salary range prior to payment.

C. Overtime Pay Program.

The Contractor shall:

1. Manage and control overtime to efficiently conduct business and provide for cost-effective utilization of human resources.

2. An employee who works sixteen (16) or more consecutive hours must receive at least eight (8) hours off duty before reporting to the next scheduled shift, unless otherwise stipulated for bargaining employees under a collective bargaining agreement. However, in the case of an emergency, as defined by senior management (Division Manager or above), employees may be required to work more than sixteen (16) hours or receive less than eight (8) hours off duty to ensure all operational requirements are met. **(RA#15) (RA # 19)**

3. Apply the following provisions regarding the payment of overtime:

   a. Exempt Employees

      The following exempt employees, who are directed and scheduled to work overtime and such overtime is approved by the Contractor, may be paid at their straight-time hourly equivalent base pay for all hours worked in excess of 80 hours in a two-week pay period. **(RA #26)** Hours actually worked and paid absences shall be considered as hours of work for computing overtime pay under this Appendix A**.** **(RA#3)**

      (1) Supervisory employees Grade VI or below.

(2) Employees, as identified below, who are assigned to work a schedule different from the basic work schedule of the Plant.

(a) Supervisory employees within the Fire Department.

(b) Supervisory employees within the Security Force Department.

(c) Supervisory employees within the Utilities Department.

(d) Employees within the Emergency Operation Center.

b. NENB Employees.

The following overtime provisions shall be applicable. These provisions will be reviewed on an annual basis to determine future applicability.

(1) Except as provided in subparagraphs (2) and (3) below, a NENB employee shall be paid at the rate of one and one-half (1½) of the employee's base pay and shift differential, if applicable, for all hours worked in excess of eight (8) hours (5-day workweek participants) or ten (10) hours (4-day workweek participants) in any twenty-four (24) hour period or forty (40) hours in any one basic workweek, calculated on both a daily and weekly basis with the payment of the higher amount so derived but in no event will this result in double compensation.

(2) Each employee participating in a workweek consisting of five (5) eight (8) hour days shall receive time and one-half of the employee's base pay for all hours worked on the employee's first day of rest, and double time for all hours worked on the employee's second day of rest.

(3) Each employee participating in a workweek consisting of four (4) ten (10) hour days shall receive time and one-half of the employee's base pay for all hours worked on the employee's first and second day of rest, and double time for all hours worked on the employee's third day of rest.

(4) Hours actually worked shall be considered as hours of work for computing overtime pay.

(5) An employee who is required to work in excess of sixteen (16) continuous hours, excluding the nonpaid lunch period, shall be paid two (2) times his/her regular base pay for all such continuous hours worked in excess of sixteen (16).

(6) If an employee is required to work eleven (11) or more continuous hours (counting the regular lunch period) he/she shall be granted a meal allowance of $4.00. If the employee works eleven (11) hours and is to continue working, he/she will be granted the meal allowance and thirty (30) minutes to eat on Company time. An employee will be granted another meal allowance and thirty (30) minutes to eat on Company time for each successive four (4) hours of work, providing he/she is to continue working. If he/she is scheduled to clock out at the end of a four (4) hour period, the employee will be furnished the meal allowance only. Day shift employees only, scheduled to work their full regular shift and two (2) or more hours immediately preceding their regular shift, will be granted a meal allowance of $4.00 for breakfast to be eaten before they report for scheduled work.

(7) An employee reporting to work at his/her regular starting time, unless previously notified not to report, may be paid at his/her appropriate base pay and shift differential, if applicable, for all hours worked, but not less than for four (4) hours.

(8) An employee called in by the Contractor to work outside his/her regular shift to meet special requirements may be paid at the applicable overtime rate for all hours worked, but not less than four (4) hours. However, should an employee be notified prior to the completion of his/her previous shift to report to work prior to the start of his/her regular shift and such work is contiguous to the regular shift, he/she will be guaranteed two (2) hours pay at his/her applicable overtime rate.

D. Shift Differential Pay Program.

The Contractor shall apply the following provisions to all shift work schedules and shift differentials:

1. Shift differentials will not be used in computing pay for excused absences except as otherwise provided in this Appendix A.

2. Exempt employees grade VIII or lower may receive shift differential at the rate of ten percent (10%) of his/her base pay for all hours worked when he/she is assigned to work a night shift (as defined in Paragraph 4. below). The employee's salary subject to shift differential payments shall be calculated by converting the employee's basic monthly salary to an hourly equivalent rate. This calculated rate is multiplied by ten percent (10%) to arrive at the appropriate shift differential rate for all applicable hours.

3. An exempt Security Officer who is assigned to work on the 12-hour rotating shift may receive a shift differential at the rate of ten percent (10%) of his/her base pay for all hours worked on the rotating shift. The employee's salary subject to shift differential payments shall be calculated by converting the employee's basic monthly salary to an hourly equivalent rate. This calculated rate is multiplied by ten percent (10%) to arrive at the appropriate shift differential rate for all applicable hours.

4. NENB employees who are assigned to work a night shift may receive a shift differential for all hours worked on a night shift as follows:

<u>8-Hour, 5-Day Workweek</u>

Swing Shift	4:00 p.m.-12:30 a.m.	$.50 per hour
Graveyard Shift	12:00 a.m.- 8:30 a.m.	$1.00 per hour

<u>10-Hour, 4-Day Workweek</u>

Swing Shift	5:00 p.m.-3:30 a.m.	$.50 per hour
Graveyard Shift	9:00 p.m.-7:30 a.m.	$1.00 per hour

E. <u>Compensations for Certifications</u>.

Non-bargaining employees may be paid for certifications on the same basis as employees within the MTC and PGU Bargaining units**. (RA#5)**

F. <u>Compensation for Labor Pool</u>.

Non-bargaining employees may be paid for assignment to the labor pool on the same basis as employees within the MTC and PGU bargaining units**. (RA#6)**

G. <u>On Call Pay</u>.

On call pay will be allowed for Joint Technical Operating Team (JTOT) personnel as provided for in the NNSA/DOE Al Emergency Response Programs Work Authorization Statement. **(RA#7)**

H. Compensation During Suspension of Access Authorization.
(RA # 11)

1. If the access authorization of an employee is suspended by direction of the Director of Security, DOE/NNSA Service Center, the Contractor may transfer the employee to work not requiring access authorization if such work is available, without reducing the employee's base compensation. If the Contractor determines no work is available in an uncleared area to which the employee may be transferred, the Contractor may place the employee on leave with pay for up to thirty (30) calendar days at his/her base compensation and then without pay after thirty (30) calendar days until the Contractor receives notification in writing from the Director of Security, DOE/NNSA Service Center.

2. Dependent on the recommendation of the Director of Security, DOE/NNSA Service Center relative to access authorization, the Contractor may compensate the employee as set forth herein:

   a. In the event the employee was transferred to another position where such access authorization is not required, compensation may, thereafter, be the base compensation applicable to the new position, and such compensation may continue until final disposition of the case under DOE procedures 10 CFR Part 710.

   b. In the event a job transfer was not arranged (i.e., the employee was placed on leave), the employee may remain on leave (initially paid for 30 days and without pay thereafter) until final disposition of the matter.

   c. If at any stage of the access authorization procedure following a suspension or at the conclusion of the administrative review process provided under 10 CFR Part 710, the employee's access authorization is reinstated by the Director of Security, DOE/NNSA Service Center, the Contractor will offer the employee reinstatement in the same or a comparable position (for which they qualify) to the one held prior to suspension. The employee may also be reimbursed for the difference between the employee's base wage and scheduled overtime or salary and actual earnings, including earnings from other employment, during the period of unpaid suspension.

II. BENEFITS PROGRAM.

A. Policy/Objectives.

1. The Contractor will design and administer benefit programs to attract, retain, and motivate competent and productive employees to support the mission at Pantex. The program shall be:

   a. Competitive with the external labor markets.

   b. Cost-effective and within criteria prescribed by DOE.

   c. Compliant with all applicable laws and regulations.

2. Benefits program costs directly attributable to benefits provided to Contractor employees or Contractor retirees, as well as reasonable administrative costs, will be allowable under this Appendix A. Allowable insurance costs incurred in connection with the plans shall be all costs under the above plans which are applicable to the work under the Contract and which are in excess of the employee's or retiree's level of premium contribution.

3. The Contractor may provide employees the provision of making required benefit plan contribution payments on a pre-tax basis consistent with Section 125 of the IRS Tax Code.

4. DOE will recognize, as an allowable cost under this Contract, any and all costs, fines, penalties, retroactive salary adjustments, and/or charges resulting from the practices of: (1) reducing exempt employees' paid leave accruals for absences of less than whole workdays, and (2) paying exempt employees straight time overtime and shift differential.

5. a. For employees who were employed at the Pantex Plant on or before December 19, 2005, the following clause applies: **(RA # 18)**

   B&W Pantex employees transferring directly from companies affiliated with Bechtel, Honeywell and B&W Technical Services will retain their continuous or credited service for purposes of determining eligibility and vesting for vacation, severance pay, eligibility to participate in the 401(K) plan and the pension plan, entitlement to retiree medical benefits, and entitlement to early retirement benefits and early commencement of deferred vested benefits under the pension plan. Only the time the

employee participates in the B&W Pantex pension plan will be used in the calculation of pension benefits.**(RA #18)**

b. For employees who are employed at the Pantex Plant after December 19, 2005, the following clause applies: **(RA #18)**

B&W Pantex employees transferring directly from companies affiliated with Bechtel, Honeywell, and B&W Technical Services will retain their continuous or credited service for years of work performed on DOE related contracts for purposes of determining eligibility and vesting for vacation, severance pay, eligibility to participate in the 401(k) plan and the pension plan, entitlement to retiree medical benefits, and entitlement to early retirement benefits and early commencement of deferred vested benefits under the pension plan. This credit is associated with DOE contract related service at production plants, laboratories, EM sites, and other sites managed by the DOE and corporate sites whose principal business are DOE contracts. Employees transferring directly from companies affiliated with Bechtel, Honeywell and B&W Technical Services who have not performed work on DOE related contracts or at corporate sites whose principal business is DOE contracts will retain the continuous or credited service date recognized by the affiliated company from which they transfer only for the purpose of entitlement to vacation, savings plan, pension plan vesting, and early retirement. Only the time the employee participates in the B&W Pantex pension plan will be used in the calculation of pension benefits.

For purposes of this clause, “DOE” represents the Department of Energy, including the National Nuclear Security Administration and Naval Reactors.

c. B&W Pantex may on a case-by-case basis, with the advance approval of the Contracting Officer, extend the benefits in accordance with paragraph 5.a. to corporate personnel possessing unique capabilities needed at Pantex where employment and relocation of the individual may be otherwise unattainable.**(RA # 18)**

d. On a case-by-case basis and with the advance approval of the Contracting Officer, B&W Pantex may revise the service date of employees who were previously employed at other Department of Energy sites. This revision will be made in accordance with paragraph 5.a or 5.b of this section and may be requested for either continuous or interrupted service. **(RA #23-Revision 1)**

B. Exempt and Nonexempt/Nonbargaining Benefits Program.

The Contractor shall:

1. Conduct a benefit value study every three (3) years using agreed upon actuarial methods. This study:

   a. Shall be valid for three (3) years.

   b. Must produce results that fall within the range of acceptable values. If not, the Contractor will submit an action plan to bring the benefit programs into conformance.

   c. Must include a list of not less than fifteen (15) participants to be a part of the study. The list must be mutually agreed upon by the Contractor and DOE and should include organizations in the same industries from which the Contractor competes for employees. The participant list should remain constant from period to period.

   d. Shall include all non-statutory benefit plans offered by the Contractor, including pension plans, welfare benefit plans, and paid-leave plans.

   e. Shall utilize participant comparison data that is current.

   f. Must be performed by a national consulting firm with expertise in benefit value studies.

   g. Shall include a complete copy of the methodology used to define each benefit plan, a description of the benefit plans, a list of survey respondents and the actuarial assumptions.

2. Obtain DOE approval for proposed changes to benefit plans prior to implementation.

3. Determine the value of the current benefit program costs as compared to the specified range of acceptability defined by the benefits value study as follows:

   a. The Contractor and Contracting Officer shall review the total compensation package to include pay levels in relationship to the market, with full consideration to paid rate to market positions, and the average net benefit plan value. Based on this review, the Contractor and Contracting Officer shall mutually agree whether or

not additional consideration of the average net benefit plan value in the context of the total compensation package is necessary.

b. When the Contractor's net benefit plan value does not exceed five percent (5%) of the average net benefit value as determined by the benefit study, the program costs shall be considered within the range of acceptability and no further action will be required on the part of the Contractor.

c. When the Contractor's net benefit plan value falls within a range that is greater than five percent (5%) and up to ten percent (10%) of the average net benefit value as determined by the benefit study, an action plan to achieve conformance with the range of acceptability will be required, unless otherwise justified and approved in writing by the Contracting Officer.

d. When the Contractor's net benefit plan value exceeds ten percent (10%) of the average net benefit value as determined by the benefit study, an action plan to achieve conformance with the range of acceptability is required. Any action taken will be implemented in a manner so as to preclude disparate impact to nonbargaining employees.

4. Apply the provisions of the benefit plans as follows:

a. Group Insurance.

(1) The Contractor has made available to its exempt and NENB employees at Pantex the following insurance benefits:

Group Life Insurance
Accidental Death & Dismemberment Insurance
Dependent Life Insurance
Comprehensive Medical Insurance
Group Dental Insurance
Long Term Disability Insurance
Retiree Group Life Insurance
Retiree Comprehensive Medical Insurance
Mail Order Prescription Drug Program
Foreign Travel Medical Assistance Insurance
Vision Plan **(RA#4)**

(2) A pro-rata portion of dividends, returned premiums, or other credits which may accrue to the group insurance program

shall be credited to the portion of the Contractor's contributions allowable under this Contract.

(3) In the event of the termination or expiration of this Contract, all liabilities and costs associated with the Retiree Comprehensive Medical Insurance plans shall be assumed by the DOE and/or a successor contractor.

b. Defined Benefit Pension Plan.

(1) The Contractor maintains the following retirement plans for its employees at Pantex:

(a) B&W Pantex, Retirement plan for nonbargaining employees (excluding nonbargaining employees required to carry a firearm and meet physical fitness requirements of the security force or nonbargaining employees who are employed as a firefighter/paramedic responder. **(RA #4 & RA#12)**

(b) Retirement plan for bargaining unit employees of the Metal Trades Council of B&W Pantex, (including nonbargaining employees who are employed as a firefighter/paramedic responder). **(RA #4 & RA #12)**

(c) Retirement plan for bargaining unit employees of the Pantex Security Force, (including nonbargaining employees who are required to carry a firearm and meet physical fitness requirements of the security force); however, employees hired on or after March 18, 2002, are not eligible to participate in this plan and employees hired prior to March 18, 2002, who elect to participate in the enhanced 401(k) plan will no longer be eligible to participate in the retirement plan. **(RA #4 & RA #12)**

(d) B&W Pantex employees transferring from Bechtel, Honeywell, or B&W Technical Services affiliated companies will not have a waiting period to participate in the B&W Pantex pension plan.

(2) In the event the Contractor—

(a) Ceases accrual of benefits under the defined benefit plans during the term of this Contract, then Contractor

shall continue the funding vehicle and pay benefits due under the Plans from said funds. Should this Contract be subsequently terminated or expire, then in such event Contractor shall comply with the provisions in Schedule I.

(b) Terminates the defined benefit plan(s) upon DOE approval, then Contractor shall purchase annuities under the pension IPG contract or on the open market, whichever is the most cost effective. The procedures for disposition of Contract Service Assets and Contract Service Liabilities shall be those identified in Schedule I.

(3) DOE shall have the right to examine and audit the Contractor's computations of the adjustments provided for under this Part II.B.4.b., together with the supporting data, if the Contracting Officer so requests. The formula and assumptions used for such adjustments shall be consistent with the actuarial basis and principles then currently used in computing the pension cost.

(4) Copies of all amendments to the Plans and contract shall be supplied to DOE when the amendments are executed by the Contractor.

(5) In the event of a discontinuance of the Prime Contract, the Contractor will determine final pension costs in accordance with the provisions in Schedule I, Principles and Procedures for Accounting and Reconciliation of DOE Funding Obligations.

(6) The Contractor shall secure the approval of DOE prior to any commitment to a successor funding agent for the disbursement of benefits.

(7) The defined benefit plans maintained for employees of the Contractor are amended and restated as noncontributory plans effective as follows:

(a) Nonbargaining Plan — October 1, 1991 **(RA #4)**

(b) Metal Trades Council Plan — March 1, 1993

(c) Security Force Plan — June 1, 1994

(8) The Contractor shall annually submit to DOE, copies of the Plans' actuarial valuations, accounting reports, and IRS Tax Packages 5500. The actuarial valuation will reflect the Contractor's actual pension costs and funding requirements for that year.

c. Defined Contribution Savings Plan.

(1) The Contractor maintains the following 401(k) retirement plan for its exempt and NENB employees at Pantex Plant.

B&W Pantex 401(k) Plan for Non-bargaining Employees **(RA # 4)**

(a) The Contractor is the Plan Sponsor for this 401(k) retirement plan.

(b) Under the terms of such plan, an employee (excluding nonbargaining employees required to carry a firearm and meet the physical requirements of the security force) may contribute from one (1) to fifty (50) percent of compensation and the Contractor will match sixty-two and one half percent (62.5%) of the employee's contribution up to eight percent (8%) (maximum match of five percent (5%)). Costs required to meet this matching contribution are allowable costs under this Contract. **(RA #4 & RA #12)**

(c) Under the terms of such plan, nonbargaining employees required to carry a firearm and meet physical fitness requirements of the security force may contribute from one (1) to fifty (50) percent of compensation and the company matching formula for employees who accepted employment prior to March 18, 2002, and do not elect to participate in the enhanced 401(k) plan is fifty percent (50%) of the first eight percent (8%) of employee's contributions to a maximum company match of four percent (4%). **(RA #12)**

(d) Effective January 1, 2003, the company matching formula for the enhanced 401(k) plan (for nonbargaining employees required to carry a firearm

and meet physical fitness requirements of the security force who have accepted employment prior to March 18, 2002, and who elect to participate in the enhanced 401(k) plan) shall be one hundred percent (100%) of the first ten percent (10%) of employee contributions. **(RA #12)**

(e) New nonbargaining employees required to carry a firearm and meet physical requirements of the security force who accept employment on or after March 18, 2002, shall be eligible for the basic 401(k) plan through December 31, 2002, and shall be moved to the enhanced 401(k) plan on January 1, 2003. **(RA #12)**

(2) The Contractor maintains the following 401(k) retirement plan for its Metal Trades Council bargaining employees.

B&W Pantex 401(k) Plan for Bargaining Employees **(RA #4)**

(a) Under the terms of such plan, an employee may contribute from one (1) to fifty (50) percent of compensation and the Contractor will match sixty two and one half (62.5) percent of the employee's contribution up to eight percent (8%) (maximum match of five percent (5%)). Costs required to meet this matching contribution are allowable costs. **(RA #4 & RA#9)**

(3) The Contractor maintains the following 401(k) retirement plan for its Security Force bargaining employees.

B&W Pantex 401(k) Plant for Bargaining Employees. **(RA#4)**

(a) Under the terms of such plan, an employee may contribute from one (1) to fifty (50) percent of compensation and the company matching formula for employees who accepted employment prior to March 18, 2002, and do not elect to participate in the enhanced 401(k) plan is fifty percent (50%) of the first eight percent (8%) of employee's contributions to a maximum company match of four percent (4%). **(RA #4)**

(b) Effective January 1, 2003, the company matching formula for the enhanced 401(k) plan for all employees who have accepted employment on or after March 18, 2002, and for employees who have accepted employment prior to March 18, 2002, and who elect to participate in the enhanced 401(k) plan instead of the retirement plan and basic 401(k) plan shall be one hundred percent (100%) of the first ten percent (10%) of employee contributions. **(RA #4)**

(c) New hires accepting employment on or after March 18, 2002, shall be eligible for the basic 401(k) plan through December 31, 2002, and shall be moved to the enhanced 401(k) plan on January 1, 2003. **RA #4)**

(d) All costs required to meet the matching contributions as stated above are allowable costs. **(RA #4)**

(4) In the event of the termination or expiration of this Contract, or in the event the Contractor shall terminate the Plan(s) upon DOE approval, then in such event DOE liability shall be limited to such liability as has accrued under the Plan(s) to the date of termination of the plan, or expiration or termination of the Prime Contract, whichever is applicable.

d. Holidays.

(1) Each exempt and NENB employee may, when the work schedule permits, be granted time off for holidays as follows:

(a) Each employee participating in a workweek consisting of five (5) eight (8) hour days will be granted time off with pay for the following ten (10) holidays per calendar year and paid at the rate of eight (8) hours pay at his/her straight time base pay rate, if applicable: **(RA #4)**

New Year's Day	Good Friday
Memorial Day	Independence Day
Labor Day	Columbus Day
Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	Floating Holiday

(b) Each employee participating in a workweek consisting of four (4) ten (10) hour days will be granted time off with pay for the following eight (8) holidays per calendar year and paid at the rate of ten (10) hours pay at his/her straight time base pay rate, if applicable. **(RA #4)**

New Year's Day	Christmas Day
Memorial Day	Independence Day
Labor Day	Columbus Day
Thanksgiving Day	Floating Holiday

(2) A NENB employee required to work on one of the designated holidays, shall receive holiday pay (as defined above) plus premium pay for all hours worked on the holiday at the rate of two times his/her straight-time base pay rate and shift differential, if applicable.

(3) An exempt employee who is required to work on a day observed as one of the designated annual holidays may be permitted to choose another regularly scheduled workday to observe the holiday. The alternate workday shall be taken at a later date, but within the same calendar year, where practicable.

e. Vacation.

(1) Exempt and NENB employees shall earn, on a prorated basis, and may take vacations in accordance with the following schedule:

Completed Years of Service	Annual Vacation Accrual
1-2 years	80 hours
3-9 years	120 hours
10-19 years	160 hours
20 years or more	200 hours

(2) Exempt and NENB employees may take annual vacation leave in one-hour increments. However, exempt employees who are allowed time off for vacation in increments of less than a whole workday and have exhausted all accrued vacation leave benefits shall receive one hundred percent (100%) of their regular base pay without reduction for the vacation leave. Vacation leave in increments of whole workdays taken by exempt employees who have exhausted all accrued vacation leave will be considered time off without pay.

(3) Vacation allowance will be paid based upon the employee's base pay in effect at the time the vacation is taken, or at the time of transfer or termination, as is applicable.

(4) With the approval of the Contractor, vacation for all employees may be taken in advance of accrual. There may be advanced only as much vacation as will be accrued during the six-month period following the date of request. Should an employee who has received such advanced vacation terminate before his/her accrual equals the advance, the Contractor will use due diligence in obtaining the appropriate refund.

(5) The Contractor may, with Contracting Officer approval, grant a newly-hired employee service credits for purposes of vacation accrual when it is deemed necessary in order to attract and hire requisite highly skilled staff.

(6) Employees who are eligible for the sick leave buy back benefits in a payroll year may elect to have the company buy back vacation credits at the employee's base hourly day rate, in one hour increments, which are in excess of eighty (80) hours. Only active employees on the payroll at the time of the annual sell back will be eligible to participate. In no instance are employees paid for more than they are eligible to receive. **(RA #4)**

(7) Nonbargaining employees are allowed the opportunity to donate vacation hours to fellow employees who have experienced a catastrophic illness or injury of an immediate family member and who have exhausted all accrued time, thus resulting in a prolonged, unpaid leave of absence. Eligible nonbargaining employees may apply for a vacation donation thought this program designated as the Leave

Donation Program. Eligible employees may donate accrued vacation in whole-hour increments. The Benefits Department administers donated vacation hours and recipient hours according to Leave Donation Program criteria. **(RA #10)**

f. Sick Leave.

(1) Sick Leave is earned and accrued, on a prorated basis, by exempt and NENB employees as follows:

Annual Sick Leave Accrual

Exempt employees	120 hours
NENB employees	120 hours

No sick leave during the first thirty (30) days of employment except for occupational illness or injury. **(RA #4)**

(2) Sick leave accruals shown in paragraph (1) above for exempt and NENB employees may accrue to a maximum 1,734 hours.

(3) In the event an employee has exhausted all sick leave accruals, the employee may have their pay continued at seventy percent (70%) of his/her base pay for the remaining duration of the incapacitation period normally not to exceed a total incapacitation period of twenty-six (26) weeks from the date of disability. **(RA #4)(RA #16)**

(4) Employees may elect to be reimbursed for up to forty-eight (48) hours of unused earned sick leave credits each year. The reimbursement will be at the employee's basic rate of pay and determined by each employee's individual sick leave usage the previous payroll year. Employees must be on the active payroll at the annual buy-back period to be eligible to participate.

(5) In the event an employee is transferred to work under this Contract, such employee shall retain unused sick leave credits. Upon transfer from work under this Contract, the unused sick leave credits will not be paid to the employee.

(6) Immediately when an employee's service with the Contractor is terminated, sick leave credits are forfeited and further sick

leave accrual ceases. Provided however, that if an employee is terminated due to a reduction in force and is subsequently rehired by the Contractor at this site, within three (3) years from the date of such termination in the case of exempt employees, or two (2) years in the case of NENB employees, such sick leave credits as the employee had to his/her credit at the time of termination will be reinstated, effective with the date of his/her reemployment.

(7) In the event of a qualifying long-term disability, employees may only use accrued sick leave until such time when Long-Term Disability benefits are payable.

(8) Sick leave will be paid based upon the employee's base pay in effect at the time the sick leave is actually taken.

(9) Sick leave payments shall not duplicate Workers' Compensation benefit payments.

(10) In the event of the death of an employee who is in a paid sick leave status at the time of death, sick leave payments or credits due up to the date of death may be paid to the employee's surviving spouse, or other representative of the employee's estate, in accordance with the applicable laws. This provision is applicable to all employees.

(11) Exempt and NENB employees may report and be charged for accrued sick leave in increments of fifteen (15) minutes. Exempt employees who are allowed time off for a partial day and have exhausted all sick leave shall receive one hundred percent (100%) of their regular base pay without reduction for the sick leave. Sick leave in increments of whole workdays taken by exempt employees who have exhausted all accrued sick leave will receive seventy percent (70%) of his/her base pay for the remaining duration of the illness normally not to exceed a total incapacitation period of twenty-six (26) weeks. **(RA #4)(RA #16)**

(12) Exempt and non-exempt non-bargaining employees may use up to 40 hours of earned sick leave credits each payroll year to care for a family member (as defined by HR Management.**(RA #16)**

(13) The following 'grandfather' provisions regarding the revision to the sick leave policy will apply to all exempt and NENB

employees who are full-time employees at Pantex at implementation of this Appendix A:

(a) Exempt employees who have accrued sick leave in excess of 1,734 hours will have their accruals ceased. They will not accrue additional leave until such time as their accumulated sick leave credits drop below 1,734 hours. At that time, they will accrue sick leave at the accrual rate shown above up to the 1,734 hour maximum. In the event of a qualifying long-term disability, these employees will be allowed to use all accrued sick leave prior to the activation of Long-Term Disability benefits.

(b) Exempt and NENB employees, who have not accrued sick leave in excess of 1,734 hours at implementation of this Appendix A, will continue to accrue at the rate shown above up to the maximum allowed. In the event of a qualifying long-term disability, these employees will be allowed to use all accrued sick leave prior to the activation of Long-Term Disability benefits.

g. Personal Leave.

(1) The following employees are eligible for Personal Leave:

(a) Exempt employees

(b) NENB employees

(c) MTC employees

(d) PGU Communication Sergeants **(RA #4)**

(2) An eligible employee may be granted time off at his/her base pay with the approval of the Contractor, for occasional absences due to personal reasons. Personal leave for each eligible employee shall not exceed sixteen (16) hours per payroll year. Employees may report and be charged for personal leave in one hour increments. Exempt employees who are allowed time off for personal reasons in increments of less than a whole workday and have already used sixteen (16) hours of personal leave in that payroll year shall be required to use accrued vacation leave for that partial day.

However, exempt employees who are allowed time off for a partial workday and have exhausted all personal and vacation leave shall receive one hundred percent (100%) of their regular base pay without reduction for the personal leave. Personal leave hours taken in increments of whole workdays by exempt employees who have already used sixteen (16) hours will be considered time off without pay. **(RA #8)**

(3) At the discretion of the General Manager, an eligible employee may be granted personal leave in excess of sixteen (16) hours per payroll year due to circumstances related to personal hardship provided the affected employee has exhausted all accrued vacation leave. Each case will be reviewed and approved by the General Manager.

h. Funeral Leave.

(1) The Contractor will pay an exempt or NENB employee up to three (3) days for absence from work in the event of the death of a member of his/her immediate family.

(2) Funeral leave will be paid based upon the employee's base pay in effect at the time the funeral leave is actually taken.

i. Jury Duty and Service as a Witness.

An exempt or NENB employee may be allowed time off with no reduction from the base pay the employee would have received if working full time at his/her job (not to exceed eight (8) hours per day for five (5)-day workweek participants and ten (10) hours per day for four (4)-day workweek participants, up to a maximum of forty (40) hours per week) for the time necessarily spent (i) serving on a jury or jury panel and (ii) serving as a witness, if required to do so by subpoena. Absences allowed under this provision shall not be considered as hours worked for purposes of computing overtime pay.

j. Military Leave.

(1) Training

(a) Any exempt employee who is a member of any branch of the National Guard or the Reserve Corps of any military unit recognized by either the state or the national government as a part of the armed forces shall be granted a military leave of absence when

ordered out for: (i) annual training or (ii) temporary active duty, unrelated to annual training during any workweek in which he/she performs any work for the employer. Such employee shall be paid his/her full salary for the entire week, subject to the offset of any amounts received by the employee as military pay for days absent from work. **(RA #20)**

Although not required by the Fair Labor Standards Act to do so, the Contractor will pay the full offset salary of an exempt employee for up to three (3) weeks (fifteen (15) workdays for 5-day workweek participants or up to twelve (12) workdays for 4-day workweek participants) while the employee is on military leave for an entire workweek in any one (1) federal fiscal year. In each such instance, the Contractor will offset any amounts received by the employee as military pay for a particular week. In no event will the supplemented pay paid by the Contractor cause the employee to receive more pay than he/she would have otherwise regularly received. **(RA #20)**

(b) Any NENB employee who is a member of any branch of the National Guard or the Reserve Corps of any military unit recognized by either the state or the national government as a part of the armed forces shall be granted a military leave of absence when ordered out for: (i) annual training or (ii) temporary active duty, unrelated to annual training. During this absence, he/she will be paid the difference between his/her base pay and a maximum of fifteen (15) days (5-day workweek participants) or twelve (12) days (4-day workweek participants) government pay (excluding allowances and travel pay) for time necessarily lost from work (up to a maximum of forty [40] hours per week), in any one (1) federal fiscal year. In no event will the Contractor supplement the pay of a NENB employee for a time period greater than defined above.

(2) Emergency Duty.

(a) Any exempt employee who is a member of any branch of the National Guard or the Reserve Corps of

any military unit recognized by either the state or the national government as a part of the armed forces shall be granted a military leave of absence when ordered out for active local emergency service unrelated to annual training during any workweek in which he/she performs any work for the employer. Such employee shall be paid his/her full salary for the entire week, subject to the offset described below. Although not required by the Fair Labor Standards Act to do so, the Contractor will pay the full offset salary of an exempt employee for up to two (2) months while the employee is on military leave for an entire workweek in any one (1) federal fiscal year for any one (1) emergency. In each such instance, the Contractor will offset any amounts received by the employee as military pay for a particular week against the salary due from the Contractor for that particular week. In no event will the supplemented pay paid by the Contractor cause the employee to receive more pay than he/she would have otherwise regularly received.

(b) Any NENB employee who is a member of any branch of the National Guard or the Reserve Corps of any military unit recognized by either the state or the national government as a part of the armed forces shall be granted a military leave of absence when ordered out for active local emergency service unrelated to annual training. During this absence, he/she will be paid the difference between his/her base pay and a maximum of two (2) months government pay (excluding allowances and travel pay) for time necessarily lost from work (up to a maximum of forty [40] hours per week), in any one (1) federal fiscal year for any one (1) emergency. In no event will the Contractor supplement the pay of a NENB employee for a time period greater than defined above.

k. Leaves of Absence.
(RA # 17)

An employee will be allowed time off for the time spent in an approved leave status granted under the law, as set forth by the Family and Medical Leave Act and the regulations issued pursuant

thereto. Accrued vacation and sick leave time may be used in accordance with Part II.B.4.e. and Part II.B.4.f. of this Appendix A during the employee's Family and Medical Leave Act absence. In addition, the Contractor will administer leaves of absence as follows:

(1) Exempt and NENB employees may be granted a leave of absence without pay by the Contractor.

(2) For employees granted a medical leave of absence:

(a) Group insurance will be continued, for a period not exceeding twelve (12) months.

(b) Sick leave credits accrue only for the first thirty (30) days of absence.

(c) Vacation credits accrue for a period not exceeding twelve (12) months provided the employee returns to work within the twelve (12) month period.

(d) Vacation credits accrue only for the first thirty (30) days of absence if the employee is determined to be unable to return to work within the twelve (12) month period.

(3) For exempt employees granted a leave of absence without pay in order to pursue their education in a job-related or needed skill course of study, group insurance will be continued for a period not to exceed twelve (12) months. The Contractor shall require participating employees to sign a service agreement stating his/her commitment to remain employed by the Contractor for a specific period of time. These agreements shall require the employee to commit to one (1) month of employment with the Contractor for every one (1) month the employee is on leave of absence. The employee's commitment will begin after they have returned to work. In the event such employee does not fulfill the conditions of his/her agreement, the Contractor shall use its best efforts in a cost efficient manner to recover from the employee the premium cost of the insurance and refund or credit the amount so recovered to the Government.

(4) For personal and educational leave, recognized Contractor service credit, vacation, and sick leave will accrue to the employee only during the first thirty 30 days of leave.

l. Severance Pay.

(1) The following severance pay provisions will apply to exempt and NENB employees:

(a) Disqualification for Benefits.
No employee (1) who is offered employment at comparable pay and benefits by another facility, subsidiary or affiliate of the Contractor, (2) who is offered employment at comparable pay and benefits by a replacement employer, (3) who resigns, (4) who is discharged, or (5) who retires, shall be eligible for severance pay under this Contract.

(b) Pay Schedules.

1) An exempt or NENB employee laid off due to (1) a reduction in force, (2) job elimination, or (3) refusal to accept a job at a lower rate of pay as a result of a reduction in force or job elimination shall be eligible to receive severance pay with the maximum available award as follows:

Service Credit	Severance Pay
6 months but less than 1 year	Pro-rated
1 year but less than 2 years	1 week
2 years but less than 4 years	2 weeks
4 years but less than 6 years	4 weeks
6 years but less than 8 years	6 weeks
8 years but less than 10 years	8 weeks
10 years but less than 12 years	10 weeks
12 years but less than 14 years	12 weeks
14 years but less than 16 years	14 weeks
16 years but less than 18 years	16 weeks
18 years or more	18 weeks

2) NENB employees will also be eligible for severance pay in the event a NENB employee is terminated because of his/her inability, as deemed by the Contractor, to perform the essential functions of his/her job.

3) Employees terminated due to business decisions (i.e., subcontracting activities historically performed by the management and operating Contractor), may be eligible for severance pay based on the following:

a) If employees are not offered a position with the subcontractor, they are eligible to receive up to one hundred percent (100%) of the severance pay as provided on the severance schedule outlined above; or

b) If employees are offered a position with the subcontractor at reduced pay, affected employees shall be eligible to receive severance pay in accordance with the following:

1) Employees who realize less than a ten percent (10%) reduction in base pay shall not be eligible for any severance pay.

2) Employees who realize between a ten percent (10%) to fourteen point ninety-nine percent (14.99%) reduction in base pay shall receive up to twenty-five percent (25%) of the severance pay identified on the severance schedule outlined above.

3) Employees who realize between a fifteen percent (15%) to nineteen point ninety-nine percent (19.99%) reduction in base pay shall receive up to fifty percent (50%) of the severance pay identified on the severance schedule outlined above.

4) Employees who realize between a twenty percent (20%) to twenty-four point ninety-nine percent (24.99%) reduction in base pay shall receive up to seventy-five percent (75%) of the severance pay as identified on the severance schedule outlined above.

5) Employees who realize a twenty-five percent (25%) or more reduction in base pay shall receive up to one hundred percent (100%) of the severance pay as identified on the severance schedule outlined above.

(2) Pay in Lieu of Notice.

(a) Normally, exempt or NENB employees subject to a reduction in force will be given at least two (2) weeks notice. The Contractor may pay the employee at his/her base pay for two (2) weeks in lieu of notice.

(b) In the event the Contractor allows an exempt employee to resign with notice and, as deemed by the Contractor, the services of such employee cannot be productively utilized during the period of notice or if his/her presence at the work site during the notice period is not desired, the Contractor may pay the employee at his/her base pay for two (2) weeks in lieu thereof.

(c) In providing pay in lieu of notice, the provisions of the Worker's Adjustment Retraining Notification (WARN) Act will be considered, as appropriate.

m. Participation in Civic Affairs.

The Contractor may authorize employees to participate in civic affairs. The salaries, wages, and fringe benefits of employees while engaged in such approved activities will be treated as allowable costs.

The total amount of time devoted to civic activities by Contractor employees shall not exceed two thousand eighty (2,080) hours in any fiscal year.

n. Plant Shutdown.

In unusual circumstances where it is impossible or impractical for employees to report for work due to inclement weather, or where, due to inclement weather, it is deemed to be in the best interest of employee safety to close the Plant and/or send employees home early, the Contractor shall pay exempt employees their full salary for any workweek in which he/she performs any work for the Contractor and may authorize full pay for NENB employees upon concurrence by the Contracting Officer.

o. Work Apparel.

The Contractor, in some instances, provides employees with special shoes, safety glasses, goggles, clothing, and/or other apparel due to the nature of certain types of work. The Contractor provides Firefighters, guards, cafeteria and other employees with clothing such as specified uniforms, foul weather gear and badges. The cost of these items, including but not limited to laundry or similar service, due to nature of the work performed under this Contract, is allowable.

p. Voting Time.

Each employee who is registered to vote may, at his/her request, be allowed time off with base pay not to exceed two (2) hours, unless additional time is required by law, on a scheduled workday for voting in local, state, and national elections in accordance with state or local law.

q. Worker's Compensation.

The costs associated with the Contractor's Workers' Compensation Insurance Policy, as approved by the DOE, are allowable. In cases of job-incurred illness or injury of an exempt or NENB employee which is compensable under the Workers' Compensation Law, sick leave, if available, may be used to make-up the difference between Workers' Compensation payment and the employee's regular net take-home pay (base pay less Federal Income Tax Withholding (FITW) and FICA).

r. Old Age, Survivor's, and Disability Insurance and Unemployment Compensation.

Legally required contributions to Old Age, Survivor's and Disability Insurance and to Unemployment Compensation programs shall be allowable costs under this Contract. All unemployment costs directly associated with this Contract, including any costs arising from the expiration or termination of this Contract, are allowable.

s. Adjusted Service Credit.

Employees who were employed with the previous Contractor will get an adjusted service date that includes time worked with the previous Contractor at the Pantex Plant site for the purpose of determining eligibility and vesting for vacation, severance pay, eligibility to participate in the 401(k) plan and the pension plan, entitlement to retiree medical benefits, and entitlement to early retirement benefits and early commencement of deferred vested benefits under the pension plan.

III. LABOR RELATIONS.

A. Policy/Objectives.

1. It is the objective of the B&W Pantex labor relations program to pursue collective bargaining practices that promote efficiency and economy in Contract operations, judicious expenditure of public funds, and effective labor management relationships.

2. The terms and conditions set forth in collective bargaining agreements between the Contractor and recognized bargaining agents for its employees assigned to work under this Contract constitute the allowable costs for bargaining unit employees' compensation and benefits for reimbursement by DOE. The following collective bargaining agreements are incorporated by reference:

   a. Articles of Agreement between BWXT Pantex, Pantex Plant, Amarillo, Texas and Metal Trades Council of Amarillo, Texas and Vicinity, A.F. of L. - C. I. O.

   b. Articles of Agreement between BWXT Pantex and the Pantex Guards Union. **(RA #4)**

3. Expenses, including contracted legal counsel expenses, related to grievance processing and settlement, arbitration and arbitration awards, litigation involving actions related to collective bargaining, and other associated expenses including costs of meeting rooms, presentation equipment and materials, meals and room allowances for Company bargaining representatives related to collective bargaining are allowable costs.

4. Expenses associated with employee representation activities are allowable costs.

B. Labor Relations Program.

The Contractor shall:

1. Develop and implement labor relations programs that promote effective collective bargaining relationships, efficiency and economy in operations, and the judicious expenditure of public funds.

2. Comply with all applicable laws and regulations in the administration of its labor relations program.

3. Review its bargaining objectives with DOE and receive DOE approval for economic parameters prior to entering negotiations with a bargaining unit regarding economic collective bargaining issues. Such established economic parameters may be modified during the course of negotiations only with DOE approval.

4. Consult with the Contracting Officer prior to and during the course of negotiations with labor unions, and during the terms of resultant contracts, on economic issues and other matters that have a potentially significant impact on make-or-buy decisions or other matters affecting efficiency or economy of operations.

IV. MISCELLANEOUS HUMAN RESOURCES PROGRAMS.

A. Policy/Objectives.

The purpose of the Contractor Miscellaneous Human Resources Programs is to facilitate the achievement of organizational objectives and to support the business strategies of the Contractor and DOE. The programs are designed to provide competitive plans/features necessary to attract, retain, and motivate a competent workforce. Miscellaneous Human Resources Program costs directly attributable to the programs provided to Contractor employees, as well as reasonable administrative costs, will be allowable under this Appendix A. The programs shall be:

1. Designed and administered in a cost effective manner.

2. Designed and administered in a manner that provides equal access to all employees.

3. Compliant with all applicable laws and regulations.

B. Miscellaneous Human Resource Programs.

The Contractor shall:

1. Prior to implementation, obtain DOE approval for proposed changes to the provisions of any miscellaneous human resource program that result in increased costs.

2. Apply the provisions of the Miscellaneous Human Resources Programs as follows:

a. Contractor Training.

(1) Internal Training.

Internal training programs may include, but are not limited to, orientation, job training, supervisory training, and executive development. Such training programs may be conducted during an employee's scheduled workday or after working hours. An employee who participates in training after working hours will normally not be paid for hours of attendance. However, nonexempt employees who are required by the Contractor to attend such classes shall be paid at the applicable premium rate. Reasonable costs of in-house

training, including necessary equipment, material and instructor personnel are allowable.

(2) External Training.

The Contractor may send an appropriate number of employees to technical meetings, professional society meetings, seminars, conferences, and other specialized training courses when, in the opinion of the Contractor, participation at such functions may contribute to the performance of the work under this Contract. Employees participating in such functions will receive their regular salaries or wages. Travel expenses, including registration and enrollment fees, lodging, conference meals, and other necessary and related conference expenses will be allowed when authorized by the Contractor.

b. Educational Assistance.

(1) Employees (and students who have accepted a permanent job offer and signed an employment commitment) **(RA #24)** may be refunded one hundred percent (100%) of books, tuition costs including lab and other such fees, and other costs related to satellite delivery and interactive video systems. If an employee is receiving educational assistance specifically for tuition, fees and books from Federal or State assistance; scholarships; grants; or college discounts, such assistance will be deducted in determining employee's benefits under the Educational Assistance Program. Reimbursement of costs will be subject to the following conditions: **RA #22)**

(a) Courses are taken outside of paid working hours.

(b) Courses are related to the employee's current position or to another position within the Contractor's organization to which the employee may reasonably be moved or related to a degree program with a direct relationship to the employee's career path with the Contractor. (Note: Contractor employees who are enrolled in an approved degree program begun under the provisions of the Educational Assistance Program of the predecessor contract will be 'grandfathered.' Such degree programs may or may not be related to the employee's current job or job within his/her

current career path, as allowed under the prior program.) **(RA #22)**

(c) An employee is eligible to enter the Tuition Assistance Program on the first day of employment with B&W Pantex. A student who, as determined by B&W Pantex management, is pursuing a degree in a critical skill area may be eligible to enter the Tuition Assistance Program upon acceptance of a permanent job offer and signed employment commitment stating his/her commitment to remain employed by the Contractor for a specific period of time. These agreements shall require the employee to commit to two (2) months of employment with the Contractor for every one (1) month the student tuition assistance is paid prior to becoming a full time employee. The employment commitment will be full time employment with B&W Pantex. In the event such employee does not fulfill the conditions of his/her commitment, the Contractor shall use its best efforts in a cost efficient manner to recover from the employee the cost of educational assistance. **(RA #24)**

(d) Each course shall be approved by the General Manager or an authorized committee. **(RA #22)**

(e) Courses may only be taken at or through an accredited institution of higher learning. **(RA #22)**

(f) Reimbursement of funds shall be provided for tuition, lab fees, other such fees directly related to enrollment in a course, the cost of required textbooks and similar necessary expenses, but does not include transportation, meals, and like ancillary expenses. **(RA #22)**

(g) The allowance provided for herein shall be paid to an employee after completion of each semester session or term, provided that the employee shall have submitted evidence authenticated by the educational institution certifying that a grade of “C” or its equivalent or better was received by such employee in each course for which reimbursement is sought. **(RA #22)**

(h) If an employee withdraws from a course because of a Contractor directed job or shift transfer, because of involuntary entry into military service, or for some other reason beyond his/her control, the employee may be reimbursed for that portion of tuition not refunded by the educational institution. **(RA #22)**

(i) Voluntary termination of service with the Contractor prior to completion of the course will void any previous approvals of tuition refund. **(RA #22)**

(2) In addition to the training programs outlined in Paragraph (1) of Section B.2.a., which are normally conducted as regular continuing personnel activities, the Contractor may utilize appropriate facilities of the Plant to conduct training programs for its employees, whereby the instructor and employee (student-trainee) are on their own time. Such programs, offered on a voluntary basis as a convenience fringe benefit item, will be designed to further employee development through courses of self-study and/or enrollment in fully-accredited college-level courses.

c. Workforce Retraining.

The National Defense Authorization Act, Section 3161, will be used to establish the requirements and objectives in planning and implementing workforce retraining at the Pantex Plant. All costs associated with workforce retraining under the parameters of the Act are to be treated as allowable costs under the Contract. Such retraining programs require Contracting Officer approval prior to implementation.

d. Professional Fees, Dues, Licenses, and Certifications.

The Contractor may provide reimbursement to employees who obtain a professional license or certification granted by state or national certification agencies. The total amount of reimbursement under the Contract will not exceed $65,000 in any fiscal year. **(RA #13)**

e. Memberships.

(1) Costs incurred as a result of participation in the activities of technical and professional associations will be allowed, when such participation is beneficial to the work under this

Contract and does not interfere significantly with the employee's primary work assignment under this Contract. Where possible, the Contractor shall obtain corporate memberships.

(2) The costs allowed are as follows:

(a) Salaries earned while participating in these activities.

(b) Registration fees for attendance at conventions, conferences, expositions, and other meetings; such fees to include only the minimum requirements for attendance.

(c) Travel expenses connected with the attendance mentioned above; such expenses to be in accordance with the approved travel policies stated elsewhere in Appendix A.

(d) Incidental costs of materials and services incurred in preparing papers and reports related to making presentations and/or attendance at conventions, conferences, expositions, and other meetings.

f. Diversity.

(1) The Contractor shall develop and implement an annual plan for the accomplishment of DOE requirements regarding diversity.

(2) The plan shall address, at a minimum, the Contractor's approach for obtaining diversity in the areas of (1) work force utilization, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) technology transfer.

g. Personnel Temporarily Assigned to Contract Work.

The cost associated with Corporation employees not employed under the Contract, borrowed for incidental work under this Contract, is reimbursable. Reimbursement for the time such employees work under this Contract will be allowable in accordance with the employee's regular work location's government-approved operating disclosed costing practices. Time worked under this Contract for such borrowed employees will include the time spent by the employees enroute to and returning from the worksite on the first and

last day of such work. Travel cost of such borrowed personnel will be allowed in accordance with the travel policies which are contained elsewhere in this Appendix A. Upon request of the Contracting Officer, a report of corporate assignments to the Pantex Plant will be provided.

h. Personnel Temporarily Assigned From Contract Work. **(RA#14)**

(1) Corporate Assignments - The Contractor may loan, at no cost to the government, individuals working under this Contract to other operations of its corporation, as long as it does not interfere with the performance of Contract work. Upon request of the Contracting Officer, a report of personnel temporarily loaned from the Pantex Plant will be provided.

(2) DOE/NNSA Assignments – Contract personnel assigned to work for DOE/NNSA at another location for more than 30 days may receive the same work/holiday schedule as the site where temporarily assigned.

i. Authorized Return Moves of Employees (From the Burlington and Medina site)

(1) In connection with the return of any employee and their dependents to their former home from which such original transportation was allowed or to a location of equivalent distance (when the Contractor determines that such employee's services from the former Burlington site are no longer required) the following are applicable items of allowable costs, for those employees who transferred to Pantex Plant prior to July 1, 1975.

(a) Actual cost for transportation of an employee and their dependents will be allowed in accordance with the travel and relocation policies which are contained elsewhere in this Appendix A.

(b) Reasonable costs of transporting household goods and personal effects, including pets and including insurance, packing and handling charges but not storage will be allowed in connection with authorized moves.

The foregoing provisions shall not be applicable when the Contractor transfers an employee to other than contract work, or when an employee is charged for cause, or voluntarily terminates except when approved by the Contracting Officer.

(2) Return movement of dependents and household goods and effects provided under paragraph (1) above must be completed within sixty (60) days immediately following the termination of an employee.

j. Service Recognition.

(1) An employee who has completed not less than five (5) years of satisfactory service with the Contractor shall be eligible for a service award. The service awards shall be distributed on five (5)-year increments of continuous service and the average cost of each such award shall not exceed fifty-five dollars ($55). **(RA #2)**

(2) Upon retirement, employees with ten (10) to nineteen (19) years of service shall be presented an award in recognition of their employment and years of service. The cost of such retirement recognition shall not exceed one hundred dollars ($100) per individual. In addition, terminating employees with 20 or more years of service shall be presented an award in recognition of their employment and years of service. The cost of such service recognition shall not exceed two hundred dollars ($200) per individual. **(RA #25)**

k. Employee Recognition Program.
(RA #25)
The Contractor may establish award programs that encompass ideas/initiatives for improvement in areas such as, but not limited to, environment, safety, health, security, time expended, cost, quality, performance methods, welfare, morale, and/or energy conservation.

(1) Employee Recognition Awards.

(a) The Contractor may provide awards for the following reasons:

1) Employees who initiate innovative methods of improving processes, security, costs, safety and health, and performance methods.

2) Employees who demonstrate innovations in scientific and/or engineering fields.

3) Employees who have performed at an exceptional level of performance.

4) Spotlight on Excellence **(RA #25)**

(b) The costs of this awards program will be allowable not to exceed in any fiscal year an amount derived by multiplying the previous fiscal year ending base payroll by point one five percent (.15%). **(RA #21)**

(2) Employee Referral Program.

The Employee Referral Program allows B&W Pantex employees to receive monetary awards not to exceed two thousand dollars ($2,000) for referring select difficult to recruit critical skills to work at Pantex. **(RA #2)**

(3) Safety & Health Awareness and Recognition Program.

Effective Date: April 25, 2008 as approved by Reimbursement Authorization No. 27, Revision 1, dated 8-28-2008.

The Contractor may establish a Safety & Health Awareness and Recognition Program to promote a strong safety culture through increased safety and health awareness, acknowledgement of safety milestone achievements, and employee/team safety performance recognition and awards. The cost of the program will be allowable not to exceed $50,000 per fiscal year without the prior approval of the Contracting Officer. **(RA #27, Revision 1)**

l. Business Expense Program.

(1) The Business Expense Program will be available to all employees, without discrimination, and may include the following types of expenditures: Sports equipment and supplies, trophies and awards, and individual and league entrance fees.

(2) The costs of the above programs will be allowable not to exceed in any fiscal year an amount derived by multiplying

the monthly average number of employees for the preceding year by sixteen dollars ($16.00). **(RA #21)**

m. Medical Examinations and Drug Testing.

(1) The Contractor may provide routine industrial pre-employment and termination medical examinations and routine drug testing.

(2) The Contractor will conduct and maintain, consistent with applicable DOE Orders, programs of periodic medical examinations for employees during the course of their employment under this Contract.

(3) Medical facilities shall be furnished to provide medical examinations as outlined above, for temporary care of employees in the event of occupational injuries and to provide relief for minor physical complaints of employees while at work; provided, however, that for non-job-incurred injuries and illnesses the medical facilities will not be used as a substitute for an employee's obtaining medical care and treatment for which an employee is personally responsible.

n. Employee Assistance Program (EAP).

The Contractor will provide an Employee Assistance Program consistent with requirements of the Department of Transportation's procedures for Transportation Workplace Drug and Alcohol Programs, and the recommendations of the Workplace Substance Abuse Program for DOE sites and the Texas Workers' Compensation Act of 1990. This program will offer a professional, confidential (to the extent feasible regarding security interests) source of assistance to employees and members of their immediate families who need assistance with personal problems.

o. Credit Union Activities.

The Contractor may furnish certain services for an employee-sponsored credit union. The Contractor is authorized to provide office space, utilities, janitorial services, office furniture and equipment, if reasonably available. Employees, as officers and committee members of the employee-sponsored credit union, may be allowed a reasonable amount of on-the-job time to conduct credit union business, as well as the clerical and administrative services incidental to processing properly authorized payroll deductions.

p. Employee Publications.

The Contractor is authorized to publish and/or provide to its employees one (1) Corporate publication and such local employee newsletters or other publications as may be mutually agreed upon between the Contractor and DOE.

q. Recruitment and Recruitment Advertising Expenses.

Reasonable and necessary costs incurred in the recruitment of personnel, including expenditures for attracting qualified women and minority candidates; expenses for help wanted advertising; employment offices; travel of employees on recruiting assignments; preparation of booklets and other recruiting material; and with prior approval of the DOE, the use of employment agencies or executive search organizations at rates not in excess of standard commercial rates, shall be allowable.

r. Defense of Employees Involved in Work-related Claims and Legal Actions.

(1) If a claim or legal action is brought against an employee as the result of his or her conduct when performing duties under this Contract and within the employee's scope of employment, the Contractor shall be allowed the cost of defending the employee, including appeals and cost of any judgment; provided, however, that the prior approval of the Contracting Officer and the consent of the employee to be defended shall be obtained before any such defense is undertaken.

(2) The provisions of the Contract article entitled "Litigation and Claims" shall have the same application to claims and legal actions against employees under this Section as it has to those claims and legal actions which are brought directly against the Contractor. Before costs of any retained legal counsel may be allowed, the selection of such counsel must have the concurrence of the Contracting Officer.

(3) When involved in any claim or legal action covered by this Section, an employee may, with the prior approval of the Contracting Officer, be allowed time off with base pay on scheduled workdays for consultation with counsel, trial

attendance, and such other matters as are reasonably incident to the claim or legal action.

s. Fellowship Program.

(1) Costs incurred as a result of participation in the Pantex Plant Fellowship Program will be allowed. The Contracting Officer will review and approve the initial Fellowship Program prior to implementation.

(2) The costs are allowed as followed:

(a) Salaries earned while participating in the Program.

(b) Fringe benefits provided to the Program participants.

(c) Educational Assistance expenses associated with Program participation; such expenses to be in accordance with the approved Educational Assistance policies stated elsewhere in this Appendix A.

(3) The Contractor shall obtain DOE approval for proposed changes to the Fellowship Program prior to implementation.

t. Travel and Relocation.

(1) Travel costs shall be allowable to the extent they are incurred in accordance with DEAR 970.3102-05-46 and FAR 31.205-46. Travel-related costs and travel costs associated with relocation for lodging, meals, and incidental expenses shall be reasonable and allowable to the extent they do not exceed the maximum per diem rates in effect at the time of travel set forth in the Federal Travel Regulations, prescribed by the General Services Administration. The parties agree to amend this provision if and when new FAR and/or DEAR provisions are published pursuant to the Federal Acquisition Streamlining Act.

(2) Relocation expenses will be allowable subject to the provisions, limitations and exclusions of FAR 31.205-35.

SCHEDULE I

PRINCIPLES AND PROCEDURES FOR ACCOUNTING AND RECONCILIATION OF DOE FUNDING OBLIGATIONS

A. Background.

The adoption of these principles and procedures shall not be deemed nor are they intended to create rights in third parties nor abrogate existing rights of third parties including Plan Members employed under Contract No. DE-AC04-00AL66620.

B. Scope.
(Modified per M139)

These principles and procedures for financial settlement of pension funding obligations, as specified in paragraphs E. and F. below, shall apply with respect to the Plan. References to termination in these principles are intended to cover the circumstances created either when the Contract expires or when performance of work is terminated in accordance with the clause of the Contract entitled "Termination." The term "date of termination" means the date of expiration of the Contract term as extended and/or the effective date of termination as provided in said Clause.

C. General Procedures.

1. DOE agrees to fund for the Contract term, the pension cost, at the contribution rates established from time to time by an enrolled actuary retained by the Contractor, for Plan Members performing contract service.

2. The Contractor agrees to make its best effort to provide DOE with annual actuarial valuation reports within six months following the end of the Plan year. Such reports shall conform to ERISA valuation standards and contain information regarding Contract Service Assets and Liabilities associated with contract service under the Plans and an analysis of the Gains & Losses during the plan year. Included as Liabilities shall be Liabilities for Active Members, Terminated Vested Members, Survivors of Members, and Pensioners.

3. Unless otherwise agreed, the enrolled actuary retained by the Contractor will conduct an actuarial valuation of a Plan Termination basis as of the date of disaffiliation of Pantex Plant from the Contractor. DOE agrees to pay the cost of such valuation.

D. Procedures for Annual Accounting of DOE-Funded Contractor Contributions to the Plan.

For each plan year, the Contractor will provide to DOE an accounting of Contract Service Assets as follows:

1. Contract Service Assets at the beginning of the plan year;

2. The DOE-funded Contractor contributions made during the plan year;

3. Employee contributions made during the plan year;

4. The amount of investment income during the plan year at the dollar-weighted rate of return for the Plan. The dollar-weighted rate of return shall account for monthly cash flows and shall take into account both realized and unrealized appreciation;

5. Benefits disbursed on account of contract service during the plan year;

6. Plan administrative expenses for the plan year on account of contract service;

7. Contract Service Assets at the end of the plan year = (1) + (2) + (3) + (4) - (5) - (6).

   The annual accounting shall include the accrual basis market value of such Contract Service Assets as of January 1, 1987 and as of the end of each plan year thereafter. The DOE Contractor shall establish the initial market value of Contract Service Assets for January 1, 1987.

   For the plan year beginning January 1, 1987, and ending December 31, 1987, and annually thereafter, the Contractor will provide to DOE an accounting of Contract Service Assets as described above.

   Such reports shall be provided to DOE within seven months following the close of the plan year. The final accounting period shall end with the date of disaffiliation.

8. Funding Requirements

   a. Contributions to a trust during a plan year for a separate defined benefit pension plan shall be limited by the greater of:

      (1) the minimum contribution required in Section 302 of the Employee Retirement Income Security Act (ERISA) and

      (2) the amount estimated to eliminate the unfunded current liability as projected to the end of the plan year. The term “unfunded current liability” shall refer to the unfunded current liability as defined in

Section 302(d)(8) of ERISA. Contributions above the minimum shall require approval by the Department and shall be supported with adequate justification.

b. The DOE funding policy is intended to be congruent with the basic objectives of the CAS and will generally result in funding consistent with the CAS. If this policy causes a temporary, technical inconsistency with the CAS, the contractor shall immediately notify the cognizant Contracting Officer and Chief Financial Officer. The Contractor has recourse to the cost principles found at DEAR 970.3102-2(1)(2) and (3) and shall avoid penalties on that basis.

E. Procedures for Final Determination of Plan Assets and Liabilities.

1. Contract Service Assets. Contract Service Assets shall be the accrual basis market value of Contract Service Assets attributable to DOE-funded Contractor contributions, as determined above. (Those Contract Service Assets allocated to benefits already purchased under Contracts 1248 or 639 will be reflected at contract (book) value. All remaining Contract Service Assets not allocated to benefits already purchased will be reflected at market value.)

2. Contract Service Liabilities.

a. No Successor Contractor. In the event of Contract expiration or Contract termination, all accrued benefits for those receiving benefits under the Plan, all accrued benefits for terminated vested members, and all accrued benefits for active members in service on the date of discontinuance will be purchased (thus final costs) under Contract 1248, Contract 639 or on the open market, whichever is the most cost effective to the extent advisable. The Contractor will receive DOE concurrence and approval.

b. With Successor Contractor. The liability for all accrued benefits under the pension plans will be transferred to the successor contractor. This will include those benefits earned prior to June 1, 1985, which have been purchased and guaranteed by Aetna Life under Contract 639 while a Deferred Annuity Contract. The Contractor will receive DOE concurrence and approval.

3. If the Contract Service Assets, as determined in Paragraph E.1., are less than the liabilities in Paragraph E.2.a., DOE shall pay the difference to B&W Pantex, as reimbursable cost.

F. Disposition of Contract Service Assets and Contract Service Liabilities.

The parties agree that any disposition of Contract Service Assets or Liabilities upon contract termination shall be consistent with the then applicable Federal laws relating to pension plans and shall be subject to obtaining such rulings and approvals from Federal agencies as may be required by law or deemed prudent by the Contractor or DOE.

1. No Successor Contractor. Any Contract Service Assets remaining after satisfaction of all liabilities to members, former members, and their beneficiaries, pursuant to Paragraph E.2.a, will be distributed to the DOE and to employees who have made mandatory contribution as required by law provided the Contractor obtains consent of the appropriate Government agencies. Any experience credits accruing under Contracts 1248 and/or 639 will be distributed to the DOE.

2. With Successor Contractor. Contract Service Assets, will be transferred/assigned to the successor contractor's plan. (It is recognized that those Contract Service Assets guaranteeing benefits already purchased and held by Aetna under Contract 639 must remain with Aetna.) This will be accomplished by a change in plan sponsorship for the B&W Pantex Retirement Plan for Non-Bargaining Employees and the Retirement Plan for Bargaining Unit Employees of the Metal Trades Council of the Pantex Plant, and the Retirement Plan for Bargaining Unit Employees of the Pantex Security Force, Local No. 38, of the Pantex Plant, with an assignment of Aetna Contract 639 to the successor contractor. Any such change of Plan sponsorship shall occur only upon DOE approval and upon contractor filing of the necessary IRS forms. If any subsequent IRS determination results in a detrimental financial impact on Account 04, DOE will reimburse the Contractor in full.

   If, pursuant to ERISA or any other law or regulation, the maximum amount which can be transferred by or to the Successor Plans is less than the amount of the respective liabilities, only such lesser amount shall be transferred, and the difference shall be paid by DOE to the plan(s) designated by the Contractor or by the Contractor to the Successor Plans, as the case may be, together with simple interest at the then current rate which the Secretary of the Treasury establishes for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) as such rate is published from time to time in the Federal Register.

G. Right to Records.

Pursuant to Clauses 20 and 56, the Contractor agrees to provide to DOE such records and worksheets which DOE deems necessary to substantiate the calculations and dispositions of this Section.

H. Responsibility for Federal Excise Taxes.

If the Plan incurs a federal excise tax resulting from any action or inaction of the Contractor or its deputies or fiduciaries, the Contractor shall pay such excise tax.

If the Plan incurs a federal excise tax resulting from any action or inaction of the prior contractor, DOE or its deputies, DOE shall pay such excise tax.

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Appendix B

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F Small Business Subcontracting Master Plan — Pantex Plant

Contractor:	BWXT Pantex LLC
Address:	Route 726, Mt. Athos Road Lynchburg, VA 24506
Solicitation Number:	DE-RP04-00AL66620
Item/Service:	Management and Operation of the Pantex Plant
Amount of Contract First Year:	$270,000,000
Total Amount of Contract Estimated:	TBD
Period of Contract Performance:	10/1/2000–9/30/2005
Options (if any):	10/1/2005–9/30/2010

This Subcontracting Plan describes BWXT Pantex's approach to involving small business (SB), small disadvantaged business (SDB), 8(a), HUBZone (HSB), and women-owned small business (WOSB) concerns to the maximum extent practicable in the management and operation of Pantex Plant for DOE.

BWXT Pantex supports DOE's strong, long-term commitment to diversity. We believe that diversity is much more than affirmative action in the workplace. For BWXT Pantex, it is an operating principle of management that plays a key role in our success. This belief — transformed into action — provides us with a competitive advantage over other organizations, both in the workplace and in the business community. Diversity in subcontracting provides vital links to the local community, increases our flexibility in meeting program goals, strengthens the local economy, creates new opportunities, is cost effective, and represents best business practices.

The companies making up the BWXT Pantex team have long-established records of involving small business concerns in meaningful roles in government and commercial contracting. By building on our experience and by setting challenging and aggressive goals, we have made small business participation and development an integral aspect of our approach to project execution. BWXT Pantex will follow this approach at the Pantex Plant.

BWXT Pantex has chosen to submit a master plan. In addition to the master plan, we have attached an "annual" plan (Attachment A) that includes our current goals.

I. Goals

A. Goals for subcontracting with SB, SDB, 8(a), HSB, and WOSB firms will be expressed in both dollar values and percentages and will be submitted and negotiated each year upon request by the Contracting Officer within the time specified. The goals (as presented in Attachment A) shall be deemed an adjunct to the master plan when approved in writing by the Contracting Officer.

B.1. A description of all the types of products and services that will be acquired will be submitted each year upon request of the Contracting Officer. The subcontracting opportunities (see Attachment A) shall be deemed an adjunct to the master plan when approved in writing by the Contracting Officer.

B.2. Methods Used to Identify Potential Sources for Solicitation

For the Pantex proposal, we made a concentrated effort to locate qualified SB, SDB, HSB, and WOSB firms for the areas of work we had identified as realistic opportunities for subcontractor participation. All work functions were carefully scrutinized to determine the opportunities. We then analyzed the opportunities against our source lists of small businesses. With our focus and commitment to maximize the use of small businesses in our subcontracting, company capabilities were carefully evaluated in relation to the scope of work.

As a result of this analysis, we developed goals for inclusion in this Small Business Subcontracting Master Plan. The decision to establish the goals at the levels shown represents our analysis of the subcontracting opportunities available. Our HSB goals reflect the recent addition of this classification of small business, as well as our plan to increase participation as more HSB are certified to FAR 19.3.

We continually identify and review all potential sources of supplies and services, including, but not limited to, the following:

- Online access to U.S. Small Business Administration PRO-Net
- BWXT Pantex's proprietary Supplier Information System, which includes past performance data
- National Minority Purchasing Council Vendor Information Services
- Historical reports and data showing products and services obtained from small business concerns by other associate contractors
- Various directories and source lists such as the following:
  - Minority Supplier Development Council
  - Local U.S. Small Business Administration listings
  - National Association of Minority Contractors
  - MBISYS (National Minority Supplier Development Council database)
  - Dun & Bradstreet Procurement Planning Directory for Small Business Products and Services
  - National Minority Business Directory, "Try Us!"
  - Minority Business Development Agency — Department of Commerce
  - "Funded Organizations," published by U.S. Minority Business Development Agency
  - "National Directory of Minority-Owned Business Information System," published by Business Research Services, Inc.
  - "Minority and Women-Owned Business Information System," published by Source Publications, Inc.
  - "Minority-Owned High Technology Business Directory," published by Business Research Services, Inc.
- BWXT Pantex small business fairs and forums designed to attract additional small business sources

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation.

B.3. Indirect Costs

Indirect costs are not included in the goals under this plan.

II. Program Administrator

Our program administrator will ensure that the provisions of applicable law and the plan are implemented and performed. If there is any change in the name of the administrator, we will communicate it without delay to the Contracting Officer by letter. Our program administrator is:

Name: Mike Mallory

Title: Deputy General Manager

Address: BWXT Pantex, LLC, Route 726, Mt. Athos Road, Lynchburg, VA 24506

Telephone: TBD

Mr. Mallory has overall responsibility for the contractor's subcontracting program — i.e., developing, preparing, and executing individual subcontracting plans and monitoring performance relative to the requirements of this plan. The means by which the administrator will carry out the requirements of this individual plan include, but are not limited to, the following activities:

- Developing and maintaining bidders lists of SB, SDB, 8(a), HSB, and WOSB concerns from as many sources as possible
- Ensuring that procurement packages are structured to permit participation of SB, SDB, 8(a), HSB, and WOSB concerns to the maximum extent possible
- Ensuring inclusion of SB, SDB, 8(a), HSB, and WOSB concerns whose capabilities coincide with solicitations requiring their products or services
- Reviewing solicitations to identify and remove any statements, clauses, etc., that may restrict or prohibit participation of SB, SDB, 8(a), HSB, or WOSB concerns
- Ensuring that proper documentation is provided by the bid proposal board if an SB, SDB, 8(a), HSB, or WOSB concern that provided the low bid is not selected
- Ensuring establishment and maintenance of records of solicitations and subcontract awards
- Attending or arranging for attendance by company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
- Monitoring achievement of proposed goals
- Preparing and submitting semi-annual and annual subcontract reports
- Coordinating contractor's activities before and during conduct of federal agency compliance reviews
- Seeking out other small businesses through the use of mass media tools, such as internet bulletin boards, when the number of prospective sources is not adequate
- Mentoring existing small business concerns currently under subcontract, enhancing their ability to provide timely, cost-effective, quality services

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation

- Advising and training project management personnel on the purposes of this plan and fostering adequate support
- Keeping records describing performance against the goals established here
- Submitting Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, in accordance with the prime contract and instructions provided by the Contracting Officer
- Verifying that subcontracts contain the flowdown clauses pertaining to small business concerns when required and maintain the policies and procedures required by the prime contract
- Maintaining liaison and good working relationships with Small Business Administration representatives to obtain assistance and coordination in finding capable small businesses
- Maintaining a close working relationship with DOE to ensure that BWXT Pantex project objectives and activities are consistent with DOE programs
- Requiring lower-tier subcontractors to submit subcontracting plans, and monitoring for compliance with those plans
- Making monthly reports to the BWXT Pantex General Manager concerning progress made toward achievement of goals under this program.

III. Equitable Opportunities and Outreach Efforts

To ensure that SB, SDB, 8(a), HSB, and WOSB concerns will have an equitable opportunity to compete for and secure subcontracts, BWXT Pantex will conduct the following activities:

A. Outreach efforts to obtain sources

1. Contacting minority and small business trade associations
2. Contacting business development organizations
3. Attending small and minority business procurement conferences and trade fairs
4. Requesting sources from the Small Business Administration's PRO-Net
5. Using newspapers and magazine ads to encourage new sources
6. Participating in other efforts or activities to expand the socioeconomic database for this contract
7. Using book references, catalogs, source lists, or other reference material to identify SB, SDB, 8a, HSB, and WOSB sources before acquisitions are placed by the buying activities
8. Packaging solicitations (including time for preparation, scope of work, quantities, specifications, and delivery schedules) to facilitate participation by small businesses in subcontracting opportunities and solicitation, offer, and proposal activities
9. Establishing and maintaining contacts with small business trade associations and business development organizations

B. Internal efforts to guide and encourage personnel involved in purchasing

1. Conduct internal workshops, seminars, and training programs to ensure that internal customers and buyers are acquainted with BWXT Pantex policy and prime contract requirements, and to ensure that, externally, small businesses are familiar with requirements for doing business at the Pantex Plant

2. Maintain an effective outreach program by sponsoring and attending regional procurement conferences, trade fairs, and other functions to locate additional qualified sources

3. Implement an ongoing "inreach" program that gives small businesses access and exposure to key project planners and managers

4. Develop a comprehensive small business project source list (which also includes past performance) that is easily accessible and useful to buyers

5. Preselect and qualify small business concerns to perform specific scopes of work

6. Structure the program to help develop the capabilities and quality of services provided by small business suppliers and subcontractors currently performing work at Pantex

IV. Subcontracting Plan Flowdown

BWXT Pantex incorporates the flowdown clause requirements of FAR 52.219-9, as applicable to subcontracts offering further subcontracting opportunities, requiring all subcontractors — except small business concerns — that receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a similar plan. The BWXT Pantex Deputy General Manager will be responsible for implementing and monitoring this phase of the Subcontracting Plan.

V. Reports and Surveys

BWXT Pantex gives assurance of

A. Cooperating in any studies or surveys that may be required by the contracting agency or the Small Business Administration

B. Submitting periodic reports that show compliance with the Subcontracting Plan

C. Submitting SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," in accordance with the instructions on the forms

D. Ensuring that large business subcontractors with subcontracting plans agree to submit SF 294 and 295. Until directed otherwise, the SF 294 and SF 295 to be submitted are an older version (Revised 1-90)

Reporting Period	Report Due	Due Date
October 1–March 31	SF 294	April 30
April 1–September 30	SF 294	October 30
October 1–September 30	SF 295	October 30

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Addresses for submitting SF 294 and SF 295: SF 294 will be submitted to the cognizant Contracting Officer or as otherwise specified in the contract; and SF 295 will be submitted to the Department of Energy, Small Business Program Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, or as otherwise specified in the contract, and to the cognizant Small Business Administration Commercial Market Representative.

VI. Records and Procedures

To demonstrate the procedures adopted to ensure compliance with the requirements and goals of the Subcontracting Plan, BWXT Pantex will maintain the following types of records:

A. The names of guides and other data used in addition to PRO-Net as a source for SB/SDB/WOSB concerns

B. Organizations contacted in an attempt to locate SB/SDB/WOSB sources

C. On a contract-by-contract basis, records of each subcontract solicitation resulting in an award of more than $100,000 indicating whether SB, SDB, 8(a), HSB, or WOSB concerns were solicited, and if not, why not; and if applicable, the reason that the award was not made to a small business concern

D. Records to support other outreach efforts — e.g., contacts with minority and small business trade associations and attendance at small and minority business procurement conferences and trade fairs

E. Records to support internal guidance and encouragement provided to buyers through (1) workshops, seminars, training programs, incentive awards; and (2) monitoring of activities subcontract award data including the name, address, and business size of each subcontractor.

F. On a contract-by-contract basis, records to support subcontract award data, including the name, address, and the business size of each subcontractor.

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This subcontracting plan was submitted by:

Signed: Michael B. Mallory

Typed Name: Mike Mallory

Title: BWXT Pantex Deputy General Manager

Date: 3/6/00

Phone No.: TBD

PLAN ACCEPTED BY: [signature]
Contracting Officer

Date: 7/25/00

PLAN CONCURRED ON BY: [signature]
Small and Disadvantaged Business Utilization Specialist

Date: 7/25/00

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Attachment A
Annual Small Business Subcontract Plan

Prime Contract Number: DE-RP04-00AL66620

Subcontracting Goals

To establish our subcontracting goals and commitments, BWXT Pantex gathered available Pantex Plant information, forecasted probable acquisition needs, and studied and analyzed project estimates. We also used our collective past DOE experience to determine potential requirements and contingencies. Our subcontracting goals are both realistic and attainable.

A. The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) are applicable to the contract cited above or to the contract awarded under the solicitation cited.

1. The total estimated dollar value of all planned subcontracting (to all types of business concerns) under this contract is $75,000,000.00 (100%)

a. **Large Business Concerns.** Total estimated dollar value and percent of planned subcontracting with large businesses (all business concerns classified as "other than small") (percentage of item 1 above): **$30,000,000.00** and **40%.**

b. **Small Business Concerns.** Total estimated dollar value and percent of planned subcontracting with small businesses [including small disadvantaged, 8(a), HSB, and women-owned small businesses] (percentage of item 1 above): **$45,000,000.00** and **60%**

c. **Small Disadvantaged Business Concerns.** Total estimated dollar value and percent of planned subcontracting with SDBs (percentage of item 1 above): **$6,000,000.00** and **8%**. This amount is included in the amount shown under A.1.b, above, as a subset.

d. **8(a) Certified Small Business Concerns.** Total estimated dollar value and percent of planned subcontracting with 8(a) certified small businesses (percentage of item 1 above): **$1,125,000.00** and **1.5%**. This amount is included in the amount shown under A.1.b, above, as a subset.

e. **HUBZone Small Business Concerns.** Total estimated dollar value and percent of planned subcontracting with HSBs (percentage of item 1 above): **$1,125,000.00** and **1.5%**. This amount is included in the amount shown under A.1.b, above, as a subset.

f. **Women-Owned Small Business Concerns.** Total estimated dollar value and percent of planned subcontracting with WOSB (percent of item 1 above): **$6,000,000.00** and **8%**. This amount is included in the amount shown under A.1.b, above, as a subset.

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B. Potential Subcontracting Opportunities for Small Business

Table 1 lists the principal categories of subcontracting opportunities that will be made available for small business concerns. The categories shown are for general work groupings only. As additional opportunities are identified, this list will be expanded and goal percentages revised accordingly. Opportunities that are directed, or for which there is only a single supplier, are not considered available and are therefore not included in these goals.

The planned subcontractors have not been identified to foster competitive awards and to allow for the novation of subcontracts at the time of contract awards.

Subcontracting Potential	SB	SDB	HSB	8(a)	WOSB
Construction	■	■	■		■
Electrical Supplies	■	■		■	■
Environmental Services	■	■	■	■	■
Waste Management	■	■			
Computer Equipment	■	■			■
Training		■			■
Communications		■			
Fabricated Metal Products	■	■			■
Fire Protection Upgrades	■				
Soil Stabilization/Revegetation	■				
Photographic Supplies	■				■
Professional Management Support Services	■	■		■	■
Miscellaneous Services		■			■
Architect-Engineering Services	■	■			

Table 1. Subcontracting Opportunities.

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PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J - LIST OF ATTACHMENTS

APPENDIX D - KEY PERSONNEL

September 30, 2008

Pursuant to the clause entitled "Key Personnel," the following positions are considered to be essential to work being performed.

General Manager	J. Gregory Meyer
Deputy General Manager for Business and Infrastructure	Scott J. Kennedy
Deputy General Manager for Operations	John D. Woolery
Director of Directed Stockpile Programs	Jeffrey C. Yarbrough
Director of RTBF Programs	J. Dianne Ely
Manufacturing Manager	Todd A. Ailes
Engineering Manager	Steven L. Young
Applied Technology/R&D Manager	Jeffrey C. Yarbrough
Maintenance Manager	Robert L. Asbury
Environment, Safety & Health/Emergency Services	William R. Mairson
Quality Assurance Manager	James D. Stevens (Acting)
Safeguards & Security Manager	Mark E. Bentle
CFO/Controller	W. Ragan Rodgers

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PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

APPENDIX E – LIST OF APPLICABLE DIRECTIVES

October 1, 2008

Pursuant to the contract clause entitled "Laws, Regulations, and DOE Directives," the following list of directives is applicable to this contract. Environmental, Safety, and Health (ES&H) requirements for work conducted under this contract have been incorporated into this Appendix using a DOE-approved tailored process, Contractor-prepared document entitled "Management Integration & Controls Document" (MIC), which is B&W Pantex's Integrated Safety Management System Description Requirements.

List A

Pursuant to DEAR 970.5204-2(a) the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency. Omission of any applicable law or regulation from this list does not affect the obligation of the contractor to comply with such law or regulation.

Laws & Regulations	Title
5 CFR 293 Subpart E	Employee Medical File System Records
10 CFR 71	Packaging and Transportation of Radioactive Material
10 CFR 435	Energy Conservation Voluntary Performance Standards for New Buildings; Mandatory for Federal Buildings
10 CFR 707	Workplace Substance Abuse Programs at DOE Sites
10 CFR 708	DOE Contractor Employee Protection Program
10 CFR 709	Counterintelligence Evaluation Program
10 CFR 710	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material
10 CFR 712	Human Reliability Program
10 CFR 820 Appendix A	Procedural Rules for DOE Nuclear Activities
10 CFR 830	Nuclear Safety Management
10 CFR 835	Occupational Radiation Protection
10 CFR 850	Chronic Beryllium Disease Prevention Program
10 CFR 851	Worker Safety and Health Program
10 CFR 852	Guidelines for Physician Panel Determination on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits

Laws & Regulations	Title
10 CFR 824	Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations
10 CFR 1016	Safeguards of Restricted Data
10 CFR 1021	National Environmental Policy Act Implementing Procedures
10 CFR 1022	Compliance with Floodplain and Wetland Environmental Review Requirements
10 CFR 1046	Physical Protection of Security Interests
10 CFR 1047	Limited Arrest Authority and Use of Force by Protective Force Officers
15 CFR 730-774	Export Control Policy – Export Administration Regulations
29 CFR 1904	Recording and Reporting Occupational Injuries and Illnesses
29 CFR 1910	Occupational Safety and Health Standards
29 CFR 1926	Safety and Health Regulations for Construction
36 CFR Ch XII, Sub-Chapter B	National Archives and Records Administration – Records Management
36 CFR 60	National Register of Historic Places
36 CFR 63	Determinations
36 CFR 79	Curation of Federally-Owned and Administered Archaeological Collections
36 CFR 800	Protection of Historic Properties
36 CFR 1228.164	What records must be transferred to the National Personnel Records Center (NPRC)?
40 CFR 50	National Primary and Secondary Ambient Air Quality Standards
40 CFR 53	Ambient Air Monitoring Reference and Equivalent Methods
40 CFR 60	Standards of Performance for New Stationary Sources
40 CFR 61	National Emission Standards for Hazardous Air Pollutants
40 CFR 63	National Emission Standards for Hazardous Air Pollutants For Source Categories
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 80	Regulation of Fuels and Fuel Additives
40 CFR 82	Protection of Stratospheric Ozone
40 CFR 109	Criteria for Sate, Local and Regional Oil Removal Contingency Plans
40 CFR 110	Discharge of Oil
40 CFR 112	Oil Pollution Prevention
40 CFR 116	Designation of Hazardous Substances
40 CFR 117	Determination of Reportable Quantities for Hazardous Substances
40 CFR 121	State Certification of Activities Requiring a Federal License or Permit
40 CFR 122	EPA Administered Permit Programs: The National Pollutant Discharge Elimination System
40 CFR 123	State Program Requirements

Laws & Regulations	Title
40 CFR 125	Criteria and Standards for the National Pollutant Discharge Elimination System
40 CFR 131	Water Quality Standards
40 CFR 133	Secondary Treatment Regulation
40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants
40 CFR 141	National Primary Drinking Water Regulations
40 CFR 142	National Primary Drinking Water Regulations Implementation
40 CFR 143	National Secondary Drinking Water Regulations
40 CFR 156	Labeling Requirements for Pesticides and Devices
40 CFR 170	Worker Protection Standard
40 CFR 171	Certification of Pesticide Applicators
40 CFR 260	Hazardous Waste Management System General
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 266	Standards for the Management of specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
40 CFR 268	Land Disposal Restrictions
40 CFR 273	Standards for Universal Waste Management
40 CFR 279	Standards for the Management of Used Oil
40 CFR 280	Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST)
40 CFR 300	National Oil and Hazardous Substances Pollution Contingency Plan
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
40 CFR 370	Hazardous Chemical Reporting: Community Right-To-Know
40 CFR 372	Toxic Chemical Release Reporting: Community Right-To-Know
40 CFR 761	Polychlorinated Biphenyls (PCBS) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
40 CFR 1500	Council on Environmental Quality – Purpose, Policy, and Mandate
40 CFR 1501	NEPA and Agency Planning
40 CFR 1502	Environmental Impact Statement
40 CFR 1503	Commenting
40 CFR 1504	Predecision Referrals to the Council of Proposed Federal Actions to be Environmentally Unsatisfactory
40 CFR 1505	NEPA and Agency Decisionmaking

Laws & Regulations	Title
40 CFR 1506	Other Requirements of NEPA
40 CFR 1507	Agency Compliance
40 CFR 1508	Terminology and Index
41 CFR 60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor
41 CFR 101	Federal Property Management Regulations
41 CFR 109	Department of Energy Property Management Regulations
43 CFR 7	Protection of Archaeological Resources
43 CFR 10	Native American Graves Protection and Repatriation Regulations
48 CFR 45	Contract Management – Government Property
48 CFR 47	Transportation
48 CFR 970	DOE Management and Operating Contracts
49 CFR 40	Procedures for Transportation Workplace Drug and Alcohol Testing Programs
49 CFR 107	Hazardous Materials Program Procedures
49 CFR 171	Hazardous Materials Regulations – General Information, Regulations, and Definitions
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements
49 CFR 173	Shippers General Requirements for Shipments and Packages
49 CFR 174	Carriage by Rail
49 CFR 175	Carriage by Aircraft
49 CFR 176	Carriage by Vessel
49 CFR 177	Carriage by Public Highway
49 CFR 178	Specifications for Packagings
49 CFR 179	Specification for Tank Cars
49 CFR 180	Continuing Qualification and Maintenance of Packagings
49 CFR 380	Transportation
49 CFR 382	Controlled Substances and Alcohol Use and Testing
49 CFR 383	Commercial Driver’s License Standards; Requirements and Penalties
49 CFR 385	Safety Fitness Procedures
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 390	Federal Motor Carrier Safety Regulations; General
49 CFR 391	Qualifications of Drivers and Longer Combinations Vehicle (LCV) Driver Instructions
49 CFR 392	Driving of Commercial Motor Vehicles
49 CFR 393	Parts and Accessories Necessary for Safe Operation
49 CFR 395	Hours of Service Drivers
49 CFR 396	Inspection, Repair, and Maintenance

Laws & Regulations	Title
49 CFR 397	Transportation of Hazardous Materials; Driving and Parking Rules
49 CFR 571	Federal Motor Vehicle Safety Standards
50 CFR 10	Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants – General Provisions
50 CFR 17	Endangered and Threatened Wildlife and Plants
50 CFR 402	Interagency Cooperation Endangered Species Act of 1973, as Amended
16 USC	Conservation
49 USC 5109(f)	Transportation
EO 11514	Protection and Enhancement of Environmental Quality
EO 11988	Floodplain Management
EO 11990	Protection of Wetlands
EO 12898	Environmental Justice
EO 13186	Responsibilities of Federal Agencies to Protect Migratory Birds
EO 13423	Strengthening Federal Environmental Energy, and Transportation Management
	Americans with Disabilities Act of 1990
	Atomic Energy Act
	Energy Policy Act of 1992
	Federal Facility Compliance Act of 1992
DEAR 952.236.70	Administrative Terms for Architect-Engineer Contracts
OMB Circular A-130	Management of Federal Information Resources
NHPA 110	Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act (16 U.S.C. 470)
NHPA CRMP (April 2004)	Comprehensive Cultural Resource Management Plan for Pantex
TCEQ Air Permit 18379	Air Quality Permit
TCEQ Air Permit 21233	Air Quality Permit
USDA-APHIS	Wildlife Services; Letter of Authorization: Transport Skunks for Euthanization, Animal Control Authorization
TCEQ Permit WQ000229600 (EPA TX 0107107-NEPDES)	Water Quality Permit to Dispose of Waste
TCEQ Permit WQ0004397000	Water Quality Permit for Land Application
TCEQ Permit 02296	Permit to Dispose of Waste
TCEQ Permit 04397	Texas Land Application

Laws & Regulations	Title
TCEQ Permit 30459	Solid Waste Registration Numbers (EPA Number TX4890110527)
TCEQ Permit CP-50284	RCRA Compliance Plan
TCEQ Permit HW-50284	RCRA Hazardous Waste Permit
TCEQ Permit by Rule	Authorizations For Emissions to Atmosphere for Small Sources
TCEQ PERM 282334	Self-certification as a Synthetic Minor Source Under Title V of the Federal Clean Air Act (Federal Operating Permit) (Compliance with 30 TAC 122)
TCEQ TPDES MSGP	Visual Monitoring GP Construction Storm Water
TCEQ ID # 0330007	Public Water System ID Number
TCEQ UIC Permits 5W2000017 5X2600215 5X250089 5X250098	Underground Injection Control Class V Wells Associated with Permit WQ0004397000 Associated with Permit CP-50284 Associated with Permit CP-50284 Associated with Permit CP-50284
TPDES TXR05P506	Multi-Sector Industrial Storm Water Permit
TPDES TXR150000	Storm Water General Permit for Construction Projects
TAC Title 4	Texas Administrative Code - Agriculture
TAC Title 22	Texas Administrative Code - Examining Boards
TAC Title 25	Texas Administrative Code – Health Services
TAC Title 30	Texas Administrative Code – Environmental Quality
TAC Title 30 Chapter 222	Texas Administrative Code – Subsurface Area Drip Dispersal Systems
TAC Title 31	Texas Administrative Code – Natural Resources and Conservation
TAC Title 43	Texas Administrative Code – Transportation
TCEQ Memo 2/15/2006	Texas Commission on Environmental Quality (TCEQ) Toll Free Homeland Security Threat Reporting Number
TPWC 64	Texas Parks and Wildlife Code: Birds
TPWC 66	Texas Parks and Wildlife Code: Fish
TPWC 67	Texas Parks and Wildlife Code: Non Game Species
TPWC 68	Texas Parks and Wildlife Code: Endangered Species
TPWC 71	Texas Parks and Wildlife Code: Licenses and Regulations
TPWC 88	Texas Parks and Wildlife Code: Endangered Plants
TPWD-SPR-1296-844	Wildlife Research
TPWD- (no number)	Furbearing Animal Trap & Release Permit
TWC 26	Texas Water Code: Water Quality Control

List B

Pursuant to DEAR 970.5204-**2**(b) the contractor shall comply with the requirements of these Department of Energy directives, or parts thereof, as identified. Applicability to the Pantex Prime Contract is determined to be effective with the approval for incorporation or removal notification as directed by the Pantex Site Office Contracting Officer by separate memorandum and will be posted to this list during the next periodic update and publication of a modification to the Pantex Prime Contract.

Directive	Title	Full (F) Partial (P) Incorporation
MIC-1000	Management, Integration & Controls Document, **Issue 20**	F
MS-3210	Facility Engineering and Construction Section of the Mission Support S/RID, **Issue 13**	F
MS-3400	Environmental Management Section of the Mission Support S/RID, Issue 13 (Scheduled for Removal - 1st Qtr FY09)	F
O 110.3A	Conference Management	F
O 130.1	Budget Formulation Process	F
M 140.1-1B	Interface with the Defense Nuclear Facilities Safety Board (DNFSB)	P
O 142.1	Classified Visits Involving Foreign Nationals	F
P 141.2	Public Participation and Community Relations	F
O 142.3	Unclassified Foreign Visits and Assignments Program	F
O 150.1	**Continuity Programs**	**F**
O 151.1C	Comprehensive Emergency Management System	F
O 153.1	Department Radiological Emergency Response Assets	F
O 200.1	Information Management Program	F
M 200.1-1	Telecommunications Security Manual (Chapter 9)	P
O 205.1A	Department of Energy Cyber Security Management	F
M 205.1-3	Telecommunication Security Manual	F
M 205.1-4	National Security System Manual	F
N 205.2	Foreign National Access to DOE Cyber Systems	F
N 205.3	Password Generation, Protection, and Use	F
N 205.8	Cyber Security Requirements for Wireless Devices and Information Systems	F
N 205.11	Security Requirements for Remote Access to DOE and Applicable Contractor Information Technology Systems	F
N 206.4	Personal Identity Verification	F
N 206.5	Response and Notification Procedures for Data Breaches Involving Personally Identifiable Information	F

Directive	Title	Full (F) Partial (P) Incorporation
O 210.2	DOE Corporate Operating Experience Program	F
O 221.1A	Reporting Fraud, Waste, and Abuse to the Office of Inspector General	F
O 221.2A	Cooperation with the Office of Inspector General	F
O 225.1A	Accident Investigations	F
O 226.1A	Implementation of Department of Energy Oversight Policy	F
M 231.1-1A	Environment, Safety and Health Reporting Manual	F
M 231.1-2	Occurrence Reporting and Processing of Operations Information	F
N 234.1	Reporting of Radioactive Sealed Sources	F
O 241.1A	Scientific and Technical Information Management	F
O 243.1	Records Management Program	F
O 243.2	Vital Records	F
P 251.1A	Departmental Directives Program Policy	F
O 251.1B	Departmental Directives Program	F
M 251.1-1B	Departmental Directives Program Manual	F
O 252.1	Technical Standards Program	F
O 341.1A	Federal Employee Health Services	F
O 350.1	Contractor Human Resource Management Programs	F
O 350.2A	Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C. Area	F
O 412.1A	Work Authorization System	F
O 413.1A	Management Control Program	F

Directive	Title	Full (F) Partial (P) Incorporation
O 413.3A	Program and Project Management for the Acquisition of Capital Assets	F
O 414.1C	Quality Assurance	F
O 420.1B	Facility Safety	P
G 420.1-1	Nonreactor Nuclear Safety Design Criteria and Explosive Safety Criteria Guide for use with DOE O 420.1 Facility Safety	P
G 420.1-3	Implementation Guide for DOE Fire Protection and Emergency Services Programs	F
O 425.1C	Startup and Restart of Nuclear Facilities	F
O 430.1B	Real Property Asset Management	P
O 430.2B	Departmental Energy and Utilities Management	P
O 433.1A	Maintenance Management Program for DOE Nuclear Facilities	F
O 435.1	Radioactive Waste Management	P
M 435.1-1	Radioactive Waste Manual	P
M 440.1-1A	DOE Explosives Safety Manual	F
O 442.1A	Department of Energy Employee Concerns Program	F
M 442.1-1	Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety and Health	F
O 450.1A	Environmental Protection Program	F
P 450.4	Safety Management System Policy	F
M 450.4-1	Integrated Safety Management System Manual	F
P 450.7	Department of Energy Environment, Safety and Health (ES&H) Goals	F
O 452.1C	Nuclear Explosive and Weapon Surety Program	F
O 452.2C	Safety of Nuclear Explosive Operations	F
M 452.2-1	Nuclear Explosive Safety Manual	F
O 452.3	Management of the Department of Energy Nuclear Weapons Complex	F
O 452.4A	Security and Control of Nuclear Explosives and Nuclear Weapons	F
M 452.4-1A	Protection of Use Control Vulnerabilities and Designs (Note: See PXSO Memorandum dated May 9, 2005)	P
O 457.1	Nuclear Counterterrorism	F
M 457.1-1	Control of Improvised Nuclear Device Information	F
O 460.1B	Packaging and Transportation	P
O 460.2A	Departmental Materials Transportation and Packaging Management	P
M 460.2-1A	**Radioactive Material Transportation Practices Manual for Use with DOE O 460.2A**	**F**

Directive	Title	Full (F) Partial (P) Incorporation
O 461.1A	Packaging and Transfer or Transportation of Materials of National Security Interest	P
P 470.1	Integrated Safeguards and Security Management (ISSM) Policy	P
O 470.2B	Independent Oversight and Performance Assurance Program	F
O 470.3A	Design Basis Threat (DBT) Policy	F
M 470.4-1	Safeguards and Security Program Planning and Management	F
M 470.4-2	Physical Protection	F
M 470.4-3	Protective Force	F
M 470.4-4	Information Security	F
M 470.4-5	Personnel Security	F
M 470.4-6	Nuclear Material Control and Accountability	F
M 470.4-7	Safeguard and Security Program References	F
O 471.1A	Identification and Protection of Unclassified Controlled Nuclear Information	F
M 471.1-1	Identification and Protection of Unclassified Controlled Nuclear Information Manual	F
M 471.2-4	Technical Surveillance Countermeasures Manual (TSCM) (Annex)	P
O 471.3	Identifying and Protecting Official Use Only Information	F
M 471.3-1	Manual for Identifying and Protecting Official Use Only Information	F
O 475.1	Counterintelligence Program	F
O 475.2	Identifying Classified Information	F
M 475.1-1B	Manual for Identifying Classified Information	F
M 481.1-1	Reimbursable Work For Non-Federal Sponsors Process Manual	F
O 482.1	DOE Facilities Technology Partnering Programs	F
O 483.1	DOE Cooperative Research and Development Agreements	F
M 483.1-1	DOE Cooperative Research and Development Agreements Manual	F
O 484.1	Reimbursable Work for the Department of Homeland Security	F
O 522.1	Pricing of Departmental Materials and Services	F
O 534.1B	Accounting	F
O 551.1C	Official Foreign Travel	F
O 580.1	Department of Energy Personal Property Management Program	F
O 1220.1A	Congressional and Intergovernmental Affairs	F
O 1450.4	Consensual Listening-In to or Recording Telephone/Radio Conversations	F

Directive	Title	Full (F) Partial (P) Incorporation
O 5400.5	Radiation Protection of the Public and the Environment	P
O 5480.19	Conduct of Operations Requirements for DOE	F
O 5480.20A	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities	P
O 5610.2	Control of Weapon Data	F
O 5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities	F
O 5660.1B	Management of Nuclear Materials	P
DOE/EH-0416	Standards Programs Criteria	F
DOE/EM-STD 5502-94	Hazard Baseline Documentation	P
DOE/NNSA 56XB Revision 2	Development and Production Manual	P
DOE/NNSA QC-1 Revision 10	DOE/NNSA Weapon Quality Policy (QC-1)	F
DOE STD 1020-2002	Natural Phenomena Hazards Performance Categorization Guidelines for Structures, Systems, and Components	P
DOE STD 1027-1992	Hazard Categorization and Accident Analysis Techniques for Compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports	F
DOE STD 1066-1999	Fire Protection Design Criteria	P
DOE STD 1073-2003	Configuration Management	F
DOE STD 1090-2004	Hoisting and Rigging	P
DOE STD 1091-1996	Firearms Safety	F
DOE HDBK 1092-2004	Electrical Safety	F
DOE STD 1135-1999	Guidance for Nuclear Criticality Safety Engineer Training and Qualification	P
DOE STD 1186-2004	Specific Administrative Controls	P
DOE STD 1189-2008	Integration of Safety into the Design Process	F

Directive	Title	Full (F) Partial (P) Incorporation
DOE STD 3007-2007	Guidelines for Preparing Criticality Safety Evaluations at Department of Energy Non-Reactor Nuclear Facilities	F
DOE STD 3009-1994	Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis	F
DOE STD-3015-2004	Nuclear Explosive Safety Study Process (Note: See Memo from Charles Westfall, Director Nuclear Explosive Safety Division, dated July 28, 2005, for interpretation of Education Requirements)	F
DOE-NA-STD-3016-2006	DOE Limited Standard, Hazard Analysis Reports for Nuclear Explosive Operations	F
DOE STD 3020-2005	Specification for HEPA Filters Used by DOE Contractors	F
DOE STD 3025-2007	Quality Assurance Inspection and Testing of HEPA Filters	F
DOE STD-4001-2000	Design Criteria Standard for Electronic Records Management Software Applications	F
DOE Operational Procedures June 1998	Operational Procedures Enforcement June 1988 (Under Price-Anderson Amendments Act of 1988).	F
DOE Operational Procedures June 1998	Enforcement of DOE Nuclear Safety Requirements Under Price-Anderson Amendments Act of 1988	F
DOE Technical Manual	Tiedown Procedures for Type-B Containers, Shipped in Safe-Secure Trailers/Safeguards Transporter (SST/SFT)	F
DOE Technical Manual 45-51B	Transportation of Nuclear Weapons Material	P
DOE	Memorandum: Clarification of Annual Visual Inspection of all Protected Transmission Systems (PTS) (Reference DOE Manual 200.1-1)	F
DOE	Memorandum: Transmission Security Criteria for Marking Classified Lines (Reference DOE Manual 200.1-1)	F
DOE	Memorandum: Improved Cyber Security Protection for Classified Computer Systems (Reference DOE Order 205.1)	F

Directive	Title	Full (F) Partial (P) Incorporation
DOE	Memorandum: Department of Energy Standard 1027 Supplemental Guidance (Reference DOE STD-1027-92)	F
NWC TBP	Nuclear Weapons Complex (NWC) Technical Business Practice (TBP) Infrastructure Business Practices (IBPs) TBP-CM, Issue A: Configuration Management TBP-PRP, Issue E: Product Realization Process TBP-SYS, Issue H: Technical Business Practice System TBP-000, Issue E: Program Management TBP-001, Issue C: Major Assembly Release System TBP-100, Issue G: Concurrent Qualification TBP-101, Issue H: Engineering Evaluation Process TBP-200, Issue E: Product Identification and Traceability TBP-201, Issue D: Weapon Identification Systems and Marking Criteria TBP-202, Issue E: Record of Assembly and Disassembly IBP-202, Issue B: Record of Assembly and Disassembly TBP-203, Issue E: Weapon Record Cards (Addendum: NNSA Memorandum, *Request for Pantex Actions to Continue support of Electronic Inspection Record Cards (IRC)*, dated November 30, 2007) TBP-300, Issue E: Product Definition TBP-301, Issue J: Methods of Definition TBP-302, Issue D: Product and Equipment Designations TBP-303, Issue D: Seven-Digit Material and Process Specifications, and Public Domain Definition TBP-304, Issue E: Defining Commercial Product in the Engineering Drawing System TBP-305, Issue D: Configuration of Type Weapons TBP-306, Issue E: Software Product Processes TBP-308, Issue A: Computer-Aided Design Process for Electrical Products TBP-400, Issue D: Design Control TBP-401, Issue E: Definition Control TBP-402, Issue F: Product Control TBP-403, Issue E: Reviews TBP-404, Issue F: Engineering Authorization System IBP-404, Issue B: Engineering Authorization System TBP-500, Issue D: Records Management TBP-502, Issue A: Distribution of Non-Electronic Product Definition Using Electronic Transmittal Methods	F

Directive	Title	Full (F) Partial (P) Incorporation
	TBP-600, Issue D: Procurement TBP-601, Issue C: Procurement Classes of Weapon Product TBP-602, Issue D: Interpretation of Procurement index TBP-700, Issue E: Product Acceptance and Control of Nonconformance TBP-701, Issue D: Acceptance Equipment Interfaces TBP-702, Issue F: Nonconforming Material TBP-703, Issue D: Product Reprocessing and Reworking TBP-704, Issue D: Evaluation and Disposition of Discrepant Weapon Material TBP-800, Issue F: Stockpile Management TBP-801, Issue D: laboratory and Flight Test Material TBP-802, Issue D: Telemetry Procedures TBP-803, Issue F: Non-Nuclear Assurance Program TBP-804, Issue F: Stockpile Support Material TBP-805, Issue F: Repair and Retrofit of Weapons and Ancillary Equipment TBP-901, Issue B: Integrated Safety Process for Nuclear Weapons Operations and Facilities TBP-908, Issue A: Hazard Analysis and Weapon Response	
NNSA	NAP-9A, SECON Implementation	F
NNSA	NAP 14.1-C, NNSA Baseline Cyber Security Program	F
NNSA	NAP 14.2-C, NNSA Certification and Accreditation (C&A) Process for Information Systems	P
NNSA	NAP 14.3-B, Transmission of Restricted Data over Secret Internet Protocol Router Network (SIPRNet)	F
NNSA	NAP-18, Implementation of NNSA Pilot Program on Determination of Fiscal and Other Impacts of New or Revised Directives	F
NNSA	BOP-003-0304R1, Coordination and Approval Process (CAP) of Contract Actions	P
NNSA	BOP-50.002, Establishment of a National Nuclear Security Administration (NNSA) Value Management (VM) Policy	P
NNSA	BOP-50.003, Establishment of a National Nuclear Security Administration (NNSA) Independent Project Review (IPR) Policy	F
WQSD / NA-121.3	Quality Assurance Procedure (QAP) Manual, Revision 2, as published by the Weapon Quality & Surveillance Division (WQSD), NNSA	F

Directive	Title	Full (F) Partial (P) Incorporation
PXSO SD 1	Conducting Readiness Review of Hazardous Non-nuclear Facilities and Activities	F
AASHTO GDHS	American Association of State Highway and Transportation Officials	P
ACGIH TLV Booklet	TLVs and FEIs Based on the Document of the Threshold Limit Values for Chemical Substances and Physical Agents & Biological Exposure Indices	F
ANSI/ANS 8.1	Nuclear Criticality Safety in Operations with Fissionable Materials Outside Reactors	P
ANSI/ANS 8.7	Nuclear Criticality Safety in the Storage of Fissile Material	P
ANSI/ANS 8.19	Administrative Practices for Nuclear Criticality Safety	F
ANSI/ANS 8.20	Nuclear Criticality Safety Training	F
ANSI/ANS 8.24-2007	Validation of Neutron Transport Methods for Nuclear Criticality Safety Calculations	F
ANSI/ANS 8.26-2007	Criticality Safety Engineer Training and Qualification Program	F
ANSI/ANS 10.4	Guidelines for the Verification and Validation of Scientific and Engineering Computer Programs for the Nuclear Industry	F
ANSI/ASME B56.1-1993	Safety Standard for High Lift and Low Lift Trucks	F
ANSI/ASQ Z1.13.1999	Quality Guidelines for Research	F
ANSI / AWWA	C651: Disinfecting Water Mains C652: Disinfection of Water-Storage Facilities C653: Disinfection of Water Treatment Plants C654: Disinfection of Wells	P
ANSI/CGA	Commodity Specification for Air, Part G-7.1	P
ANSI D6 1989	Manual on Uniform Traffic Control Devices for Streets and Highways	P
ANSI-EIA 748A 1998	Standard for Earned Value Management Systems Intent Guide	F
ANSI/HFS 100 1988	Human Factors Engineering of VDT Workstations	F
ANSI/IEEE C95.1 (1991)	Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3kHz to 300 GHz	F

Directive	Title	Full (F) Partial (P) Incorporation
ANSI/ISO/ ASQ Q9001-2000	American National Standard – Quality Management Systems – Requirements	F
ANSI/ISO/ IEC 17025-2005	General Requirements for the Competence of Testing and Calibration Laboratories	F
ANSI S3.34	Guide for the Measurement and Evaluation of Human Exposure to Vibration Transmitted to the Hand	F
ANSI Z41-1991	Personal Protection – Protective Footwear	F
ANSI Z87.1-1989	Practice for Occupational/Educational Eye and Face Protection	F
ANSI Z88-2-1992	Respiratory Protection F	F
ANSI Z136.1-2007	Safe Use of Lasers	F
Application Manual	Revised NIOSH Lifting Equation US DHHS, January 1994	F
ASME Section VIII	Boiler and Pressure Vessel Code	F
ASME NQA-1 2000	Quality Assurance Requirements for Nuclear Facility Applications	F
ASME NUM-1-2000	Rules of Construction of Cranes, Monorails, and Hoists (With Bridge or Trolley or Hoist of the Underhung Type)	F
Commercial Facility Waste Acceptance Criteria	Criteria for Acceptance of Solid Waste at Commercial Facilities	F
DOD TB 700-2	DOD Ammunition and Explosives Hazard Classification Procedures	F
DOE/NV-325 - Revision 6	Criteria for Acceptance of Low Level Nuclear Waste for Long Term Retrieval Storage	F
EPA / 520-R-94-004	RCRA Corrective Action Plan (May 1994) OSWER Directive 9902.3-2A	F
EPA SW-846	Test Methods for Evaluating Solid Waste: Physical / Chemical Methods	F
GPG-FM-033	DOE Land Use Planning Guide – Guide for Planning Land Use at Pantex	F

Directive	Title	Full (F) Partial (P) Incorporation
IATA DGR	International Air Transport Associations – Dangerous Goods Regulations	F
ISO 14001-2004	Environmental Management Systems Specification with Guidance for Use	F
MIL-STD-1472	Department of Defense Design Criteria Standard – Human Engineering	F
NFPA 1	Uniform Fire Prevention Code (2006)	**F**
NFPA 10	Standard for Portable Fire Extinguishers (2007)	P
NFPA 13	Standard for the Installation of Sprinkler Systems (2007)	P
NFPA 15	Standard for Water Spray Fixed Systems for Fire Protection (2007)	P
NFPA 17	Standard for Dry Chemical Extinguishing Systems (2002)	P
NFPA 17A	Standard for Wet Chemical Extinguishing Systems (2002)	P
NFPA 20	Standard for the Installation of Stationary Pumps for Fire Protection (2007)	P
NFPA 24	Standard for the Installation of Private Fire Service mains and Their Appurtenances (2007)	P
NFPA 25	Standard for the Inspection, Testing, and Maintenance of Water-Based Protection Systems (2002)	P
NFPA 30	Flammable and Combustible Liquids Code (2003)	P
NFPA 51B	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work (1998)	P
NFPA 52	Compressed Natural Gas (CNG) Vehicular Fuel Systems Code (2006)	P
NFPA 54	ANSI Z223.1-2002 National Fuel Gas Code (2006)	P
NFPA 55	Standard for the Storage, Use, and Handling of Compressed and Liquid Gases in Portable Cylinders (2005)	P
NFPA 58	Liquefied Petroleum Gas Code (2004)	P
NFPA 70	National Electrical Code ® (2005)	F
NFPA 70E	Standard for Electrical Safety Requirements for Employee Workplaces	P
NFPA 72	National Fire Alarm Code ® (2007)	P
NFPA 101	Life Safety Code ® (2006)	P
NFPA 385	Standard for Tank Vehicles for Flammable and Combustible Liquids	P
NFPA 780	Installation of Lightning Protection System	F

Directive	Title	Full (F) Partial (P) Incorporation
NFPA 801	Standard for Fire Protection For Facilities Handling Radioactive Material (2003)	P
NFPA 1061	Standard for Professional Qualifications for Public Safety Telecommunicator (2007)	F
NFPA 1500	Standard on Fire Department Occupational Safety and Health Programs (2007)	F
NFPA 1582	Comprehensive Occupational Medical Program of Fire Departments	F
NFPA 2001	Standard on Clean Agent Fire Extinguishing Systems (2000)	P
NUREG / CR-6698	Guide for Validation of Nuclear Criticality Safety Calculational Methodology	F
RM 257945	AL-R8 Pit Matrix Requirements	F
UPC Chap 3-10	Uniform Plumbing Code (2003)	F

APPENDIX F – SENSITIVE FOREIGN NATIONS CONTROL

RESERVED

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PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AC04-00AL66620 for the management and operation of the Pantex Plant (the "Contract") dated October 1, 2000, by and between the Government and BWXT Pantex, LLC (Contractor), the undersigned, BWX Technologies, Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at Lynchburg, VA hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement

against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on March 3, 2000.

BWX TECHNOLOGIES, INC.

E A Womack Jr

by: E. A. WOMACK, JR,
PRESIDENT, BWX TECHNOLOGIES, INC.

CERTIFICATE

I, Charles F. Seabolt, certify that I am the Assistant Secretary of the corporation named as Guarantor herein; that who signed this certificate on behalf of the Guarantor, was then President and a Director of said corporation; that said certificate was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)	(Signature)	3 March 2000 (Date)

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AC04-00AL66620 for the management and operation of the Pantex Plant (the "Contract") dated October 1, 2000 , by and between the Government and BWXT Pantex LLC (Contractor), the undersigned, Honeywell International Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at Morristown, New Jersey, hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any

amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on this 29th day of February, 2000.

HONEYWELL INTERNATIONAL INC.

By: R F Wallman
Richard F. Wallman
Senior Vice President and
Chief Financial Officer

Attested to this 29th day of February, 2000:

Kathleen Gibson
Kathleen Gibson
Vice President and Secretary

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PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J - LIST OF ATTACHMENTS

APPENDIX H — GUIDANCE FOR PREPARATION OF DIVERSITY PLAN

(See Section 1 Clause entitled "Diversity Plan")

This Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues are already addressed in a Contract, the Contractor need only cross reference the location.

Work Force

This Contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the proposal submitted for this Contract or in the Contract itself and could include: educational assistance allowance, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any program supporting Historically Black Colleges and Universities, Hispanic Serving Institutions and Native American Institutions.

Community Involvement and Outreach

An offeror's proposal or this Contract may include a section dealing with community involvement and outreach activities. In that event, those sections may be cross referenced and do not need to be repeated. Contractor community relation activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to Governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

If appropriate to the Contractor, the Contract will contain FAR 52.219-9 “Small Business Subcontracting Plan” and other small business related clauses. Additionally, the RFP may have contained additional guidance on small business subcontracting. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement or planned involvement, should be summarized. Information concerning its subcontracting plans already submitted and approved do not need to be redeveloped or renegotiated.

Economic Development (Including Technology Transfer)

Many of the Department’s contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor’s Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor’s Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

(Appendix I added per M032)

APPENDIX I - TRANSITION AND TRANSFER UNDERSTANDINGS AND DIRECTION

1. **Records**

The Government assigns to the Contractor the possession, management and administration of all records owned by the Government transferred by the Mason & Hanger Corporation to the Contractor. This includes all personnel records owned by the Mason & Hanger Corporation or the Day & Zimmermann Corporation prior to February 1, 2001 which are now part of the DOE Systems of Records of Former Contractor Employees (title to these records shall remain with the Government). The Government recognizes the assignment of ownership of all records previously owned by the Mason & Hanger Corporation or the Day & Zimmermann Corporation. The Contractor accepts the transfer of ownership of all records previously owned by the Mason & Hanger Corporation or the Day & Zimmermann Corporation prior to February 1, 2001.

The Parties agree that the term "Documents" means the same as "Documentary Materials" as that term is defined in 36 CFR 1220.14 in the care, custody and control of the Mason & Hanger Corporation which were acquired or generated pursuant to the performance of the Mason & Hanger Corporation Contract, DE-AC04-91AL65030. The term "Documents" does not however include documents or records or correspondence between the Pantex Plant and other segments of Mason & Hanger Corporation or Day and Zimmermann generated under DE-AC04 –91AL65030 or the predecessor Contract, including those records or other such documents as are necessary to support the continuing human resources responsibilities of the Mason & Hanger Corporation Contracts Close-Out Office and elsewhere.

In no event shall this clause be construed to apply any requirement of the Privacy Act to any records that are the property of the Contractor pursuant to the terms of contract clause I.121, ACCESS TO AND OWNERSHIP OF RECORDS.

The Contractor shall not accept transfer of any agreement, contract or other instrument the costs of which are not allowable under this contract. Any agreement or contract transferred under this clause will be presumed to have as allowable the costs of administering or performing the terms of the instrument.

2. **Access**

The Government authorizes and directs the Contractor to provide access on a non-interference basis to the Mason & Hanger Corporation, its agents or employees for purposes of all closeout and transition activities for Contract DE-AC04-91AL65030, including litigation, claims, and administrative hearings arising under or relating to Contract DE-AC04-91AL65030.

This may include reasonable access to Contractor employees or such employees of its subcontractors whose employers so consent necessary for such closeout or transition activities, including the prosecution or defense of any litigation, claim, or hearing. Reasonable access to the Pantex site shall be in accordance with any applicable security, safety law, rule, regulation or DOE Order or Directive.

3. **Accountable Classified Matter**

The Contractor is assigned care, custody and control of all accountable classified matter, including but not limited to accountable classified media, documents, weapons parts and components that had been the care, custody and control of the Mason & Hanger Corporation prior to February 1, 2001, in accordance with the terms of the contract. The Mason & Hanger Corporation's most recent inventory performed under contract DE-AC04-91AL65030 shall constitute the baseline for the Contractor under this contract.

4. **Nuclear Materials**

The Contractor is assigned care, custody and control of all nuclear materials that had been the care, custody and control of the Mason & Hanger Corporation prior to February 1, 2001, in accordance with the terms of the contract. The Mason & Hanger Corporation's most recent inventory performed under contract DE-AC04-91AL65030 of nuclear materials shall constitute the baseline for the Contractor under this contract. Consistent with the clause of the contract entitled PREEXISTING CONDITIONS, the Contractor shall have sufficient time to reconcile the inventory of nuclear materials to reveal any discrepancy in the inventory.

5. **Payroll Services**

The Government directs and authorizes the Contractor to perform certain payroll services, including the payment of wages, salaries and benefits to employees of the Mason & Hanger Corporation who become employees of the Contractor effective February 1, 2001. This includes the following:

a. The final bi-weekly pay date for checks for all MHC employees is February 9, 2001 for payroll period ending February 4, 2001. B&W Pantex will process such payrolls on behalf of MHC including adjustments. Compensation paid to any Mason & Hanger Corporation employee that is determined to be unallowable by

the Government ("Disallowed Compensation") shall not be assessed against the Contractor.

b. The Contractor shall comply with the terms of all Mason & Hanger Corporation benefit plans assigned to the Contractor in existence as of January 31, 2001, and all authorized payroll deductions for savings bonds and other withholdings, for the purpose of making employee deductions and/or company contributions to such plans for the final pay period.

c. The Contractor shall pay all payroll taxes due for the payroll period in effect as of the Transfer Date for which the Mason & Hanger Corporation has not made payment.

d. The Contractor shall make final payment for those Mason & Hanger Corporation employees retiring or terminating on January 31, 2001.

e. Internal Revenue Service Procedure 96-60 provides for standard and alternate procedures for filing Forms W-2 under a "successor-predecessor" relationship. The Government authorizes a bilateral agreement between the Contractor and the Mason & Hanger Corporation to comply with Revenue Procedure 96-60, Section 5, "Alternate Procedure."

6. Travel Costs

The Contractor is directed to manage travel costs incurred by employees of the Mason & Hanger Corporation who become employees of the Contractor effective February 1, 2001 as follows:

a. The Contractor shall be responsible for the processing and payment for all travel (including local travel) expenses for employees of the Mason & Hanger Corporation who commence travel before midnight, January 31, 2001, and who will become employees of the Contractor on February 1, 2001, upon the same terms that were in effect when the travel commenced. For those former employees of the Mason & Hanger Corporation who become employees of the Contractor whose travel commences after midnight, January 31, 2001, and who have received from the Mason & Hanger Corporation a travel advance prior to midnight, January 31, 2001, the contractor shall assume and accept all of the Mason & Hanger Corporation's obligations and rights for such travel advances, but only to the extent that the Mason & Hanger Corporation assigns to the Contractor all of its obligation, rights, title and interest in any and all such travel advances.

b. For any employees of the Mason & Hanger Corporation who become employees of the Contractor and may be on assignment outside of the Pantex Site, the Contractor shall continue the reimbursement provisions of these assignments as

set forth in the agreements reached between the assigned employees and the Mason & Hanger Corporation. The reimbursement shall be continued until such time as the Contractor returns the employee to the Pantex site or otherwise changes the employee's assignment to the extent such expenses are allowable costs. Nothing herein shall be construed as creating any rights in third parties and no third party beneficiary rights are herein created or intended to be created by this provision.

7. Financial Matters

The following financial operations that may be affected by the transfer of responsibility at the Pantex Plant shall be managed by the Contractor as follows:

a. In some cases relocation payments have been made to employees of the Mason & Hanger Corporation that consist of allowable and unallowable costs. If the recipient voluntarily quits or is terminated before working for one year, the recipient is required to reimburse the Mason & Hanger Corporation a portion of the relocation payment. To the extent the Mason & Hanger Corporation assigns such rights to reimbursements or allowable costs to the Contractor, the Contractor shall accept the assignment and seek reimbursement as if the agreement would have been with the Contractor. The Contractor agrees to accept such assignment and apply the proceeds to the operation of this Contract consistent with the terms of this contract The Contractor need not accept such assignment for any employee of the Mason & Hanger Corporation who did not become an employee of the Contractor.

b. To the extent that the Mason & Hanger Corporation assigns and transfers to the Contractor such credits, rebates, refunds, allowances, state tax refunds, and other credits as may be due and owing to the Mason & Hanger Corporation as a result of allowable costs under Contract DE-AC04-91AL65030, the Contractor agrees to accept such assignment and apply the proceeds to the operation of this Contract consistent with the terms of this contract.

c. All accounts receivable balances that are transferred to the Contractor by the Mason & Hanger Corporation shall be accepted by the Contractor who shall manage such accounts in accordance with the terms of this contract. This obligation shall not apply to any account determined by either the Mason & Hanger Corporation or the Government to be uncollectible.

d. Payment of accounts payable and accrued expenses incurred but not paid by the Mason & Hanger Corp under contract DE-AC04-91AL65030 through January 31, 2001 will be made by the Contractor on behalf of the Mason & Hanger Corporation from the letter of credit obtained by the Contractor from the Government.

e. Effective as of February 1, 2001, the Contractor shall assume administrative responsibility for the financial activities associated with the closing of FY 2001, including preparation of all year-end closing documents, FY 2001 Statement of Costs Incurred and Claimed, reporting and corresponding data transmissions to the Government and other routinely included parties. The Contractor will also assist in the preparation of all documents to accurately reflect balances and activities as recorded by the Mason & Hanger Corporation for the appropriate fiscal periods. The Contractor shall assist in the preparation of the FY 2001 Statement of Costs Incurred and Claimed for the Mason & Hanger Corporation. Any subsequent audit findings affecting the Mason & Hanger Corporation's allowable costs shall not be the responsibility of the Contractor to address.

f. To the extent that any petty cash is confirmed by the Mason & Hanger Corporation's Internal Audit at the close of business on January 31, 2001 and is assigned by the Mason & Hanger Corporation to the Contractor, the contractor shall manage all such funds in accordance with the terms of this contract.

g. To the extent that the Mason & Hanger Corporation may transfer all assets and liabilities account balances to the Contractor, the Contractor shall manage such balances in accordance with the terms of this contract. To facilitate the transfer as part of the year-end-start process the Government will recast the Mason & Hanger Corporation ending account balances as the Contractor's beginning balances. This will be accomplished in a reasonable period of time.

h. The Contractor is directed to prepare all Federal, State and local tax returns and reports relating to work at the Pantex site due after January 31, 2001, with the exception of any Federal and state income tax report required to be prepared or filed by the Mason & Hanger Corporation.

i. It is recognized that the complexity of the transfers contemplated by paragraphs 5, 6, and 7 of this clause may give rise to unforeseen conditions and that exactness in the actions is not fully determinable. The traditional use of estimates in recording accruals may potentially result in future adjustments. The Contractors reliance in good faith upon said estimates provided by the Mason & Hanger Corporation or the Government shall not affect the presumed allowability of costs incurred in these transactions. The Contractor agrees to use its best efforts to address these future actions and to resolve discrepancies.

8. **Transfer of Litigation and Claims**

The Contractor agrees to accept the assignment and transfer effective February 1, 2001, of all rights, title, and interest in litigation, claims, grievances, arbitrations, including state and federal agency proceedings, Workers Compensation insurance defense cases and workers compensation claims as identified by the Contracting Officer. Pursuant to the clause entitled "Preexisting Conditions", the contractor shall not be held responsible for any liability, expense or remediation costs which may be incurred by, imposed on, or asserted based on any actions occurring before February 1, 2001. The Contractor shall however comply strictly with the contract clauses I.86 ALLOWABLE COSTS , BASE FEE AND PERFORMANCE FEE (MANAGEMENT AND OPERATING CONTRACTS) and I.99 INSURANCE-LITIGATION AND CLAIMS and their requirements that said costs be reasonable and appropriate and comply with the terms and conditions of the Contractor's Litigation Management Procedures. To the extent that Mason & Hanger Corporation has so authorized the Contractor, the Contractor shall have complete authority to (i) defend or prosecute such litigation and claims in the name of the Mason & Hanger Corporation and (ii) settle, compromise, or otherwise resolve such litigation and claims pursuant to the terms of this Contract and without further consultation with or approval of the Mason & Hanger Corporation, provided however, if any such settlement compromise or resolution shall include an admission against the Mason & Hanger Corporation, the Contractor will obtain the prior approval of the Mason & Hanger Corporation. Any additional assignment of claims or litigation from the Mason & Hanger Corporation shall be with the mutual agreement of the Contractor and Contracting Officer and in accordance with the terms of this modification.

9. **Defined Benefits Plan**

The Contractor, in accordance with clause H.9 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS, and H.30, ADVANCE UNDERSTANDING ON HUMAN RESOURCES, subparagraph (b) shall assume sponsorship of the defined benefits plans previously managed by the Mason & Hanger Corporation under Contract No. DE-AC04-91AL65030 and shall take such actions as are necessary to manage the plans in accordance with the terms of the Contract. Any Cost incurred by the Contractor that is the result of any action taken by the Mason & Hanger Corporation, the Day & Zimmermann Corporation or any fiduciary of said plans prior to February 1, 2001, shall be an allowable cost under the Contract.

10. **Personal Property**

Effective as of February 1, 2001, the Contractor accepts the care, custody, control, and accountability of the personal property for which the Mason & Hanger Corporation is accountable under the terms of Contract DE-AC04-91AL65030. Based on the Contractor's review and validation of personal property inventories prior to January 31, 2001, the Contractor is satisfied that the Mason & Hanger Corporation personal property system is properly managed and reasonably reflects sound business practice and

compliance with the Government policies and regulations. On or before September 30, 2001 the Contractor shall complete the required annual inventories of Sensitive items and Precious Metals and may complete such other inventories, as the Contractor deems necessary and reconcile those inventories with the Mason & Hanger Corporation's most current inventories for such property as of January 31, 2001.

11. **Real Property**

Prior to January 31, 2001, the Contractor shall conduct a review of the Facilities Information Management System (FIMS) and the FIMS database with real property assets at the Pantex Plant. Presuming that the database and actual real property assets compare favorably, the Contractor will accept the transfer of the care, custody, control, and accountability of the Pantex Plant real property from the Mason & Hanger Corporation.

12. **Reconciliation**

Compliance with the terms of paragraphs 10 and 11 of this Appendix I shall satisfy the requirements of contract clause I 92, PROPERTY subparagraph (i)(2)(ii). The Contractor shall bear no liability for deficiencies in the inventories provided by the Mason & Hanger Corporation for property or records and may rely upon said inventories in performance of this Contract.

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CHANGE-OF-NAME AGREEMENT

BWXT Pantex, LLC (Contractor), a limited liability company duly organized and existing under the laws of Delaware, and the United States of America (Government), enter into this Agreement as of November 26, 2007.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the United States Department of Energy, has entered into a certain contract with BWXT Pantex, LLC for the management and operation of the Pantex Plant under Prime Contract No. DE-AC04-00AL66620. The term "the contract," as used in this Agreement, means the above contract, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under this contract).

(2) BWXT Pantex, LLC, by an amendment to its certificate of formation, dated November 20, 2007, has changed its corporate name to Babcock & Wilcox Technical Services Pantex, LLC.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) In consideration of these facts, the parties agree that—

(1) The contract covered by this Agreement is amended by substituting the name "Babcock & Wilcox Technical Services Pantex, LLC" for the name "BWXT Pantex, LLC" wherever it appears in the contract; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA

By _____

Contracting Officer
Marc T. McCusker

Title _____

Babcock & Wilcox Technical Services Pantex, LLC

By _____

Dan J. Swaim, President & General Manager

BWXT PANTEX CORPORATE SEAL

CERTIFICATE

I, John Alan Jones, certify that I am the Secretary of Babcock & Wilcox Technical Services Pantex, LLC; that Dan J. Swaim, who signed this Agreement for this Company, was then President and General Manager of this Company; and that this Agreement was duly signed for and on behalf of this Company by authority of its governing body and within the scope of its powers. Witness my hand and the seal of this Company this 26th day of November 2007.

By: _____
John Alan Jones
Secretary & Chief Counsel

PANTEX CORPORATE SEAL