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PART I—THE SCHEDULE

Section A. Solicitation/Offer and Award

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES 1

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.
DE-AC05-00OR22800	DE-RP05-00OR22800	[ ] SEALED BID (IFB) [x] NEGOTIATED (RFP)	3/21/00	N/A

7. ISSUED BY CODE

U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
P.O. Box 2001
Oak Ridge, TN 37831

8. ADDRESS OFFER TO (If other than Item 7)

Direct Delivery Address:
U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
200 Administration Road, ATTN: Ballard A. Jackson Jr.
Oak Ridge, TN 37830

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

SOLICITATION

9. Sealed offers in original and See Section L copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in the Federal Office Building at Oak Ridge, TN until 4:00 p.m. *(Hour)* local time 5/8/00 *(Date)*

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. (NO COLLECT CALLS)	C. E-MAIL ADDRESS
	Ballard A. Jackson Jr.	(865) 241-1646	jacksonba@oro.doe.gov

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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 180 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 which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
N/A				

14. ACKNOWLEDGEMENT 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
	A001	4/13/00		
	A002	4/25/00		

15A. NAME AND ADDRESS OF OFFEROR

BWXT Y-12, LLC
1055 Commerce Park Drive
Suite 300
Oak Ridge, TN 37830

DUNS #14-195-2312

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

John T. Mitchell, President

15.B. TELEPHONE NO. (Include area code)	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
865-483-6226			**May 8, 2000**

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

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

26. NAME OF CONTRACTING OFFICER (Type or print)
G. Leah Dever
Manager, NNSA, ORO

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

28. AWARD DATE 8/31/00

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

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is unusable

STANDARD FORM 33 (REV. 9-97)
Prescribed by GSA - FAR (48 CFR) 53.214(c)

PART I—THE SCHEDULE

Section A. Solicitation/Offer and Award

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SECTION B
SUPPLIES OR SERVICES AND PRICES/COSTS

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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 Y-12 National Security Complex (Y-12 NSC), located at Oak Ridge, Tennessee as described in Section C, Statement of Work, or as may be directed by the Contracting Officer (CO) within the scope of this Contract, or as may be agreed upon by the Contractor and the CO.

B.2 TRANSITION COST, ESTIMATED COST, MAXIMUM AVAILABLE FEE, AND AVAILABLE FEE

(a) **Estimated Cost:**

(1) The term of the transition period is from September 1, 2000 through October 31, 2000. The transition period will be on a cost reimbursement basis and the estimated cost will be negotiated after contract award.

(2) The Estimated Cost of the Fiscal Year (FY) 2001 period of performance is $567,376,000 (including fee).

(3) The Estimated Cost of the Fiscal Year (FY) 2002 period of performance is $634,411,000 (including fee).

(4) The Estimated Cost of the Fiscal Year (FY) 2003 period of performance is $674,299,000 (including fee).

(5) The Estimated Cost of the Fiscal Year (FY) 2004 period of performance is $719,428,000 (including fee).

(b) **Fee:**

(1) The Estimated Fee Base as defined in Department of Energy Acquisition Regulations (DEAR) 970.15 for FY 2001 is $484,177,068. The proposed Maximum Available Fee for FY 2001 is $22,000,000.

(i) The Estimated Fee Base for FY 2002 is $527,634,396. The Maximum Available Fee for FY 2002 is $22,000,000.

(ii) The Estimated Fee Base for FY 2003 is $602,760,811. The Maximum Available Fee for FY 2003 is $22,940,552.

(iii) The Estimated Fee Base for FY 2004 is $633,649,655. The Maximum Available Fee for FY 2004 is $26,200,000.

(2) The Maximum Available Fee as proposed and set forth in (b)(1) above for FY 2001 shall also serve as the Maximum Available Fee for FY 2002 - FY 2005 and Option Years FY 2006 - FY 2010 unless the Estimated Fee Base for a given fiscal year deviates by more than plus or minus 15% from the Estimated Fee Base set forth above for FY 2001. The proposed Maximum Available Fee shall be applicable to the prime

contractor and its members in a joint venture or Limited Liability Company, teaming partners, and subcontractors identified and considered as part of the selection and award of this contract, if any.

(3) In the event the Estimated Fee Base deviates for any fiscal year more than plus or minus 15% from the Estimated Fee Base set forth in (b)(1) above, the Contractor agrees to negotiate with the U.S. Department of Energy (DOE) an equitable adjustment to the Maximum Available Fee amount to reflect the impact of such deviation. The new Maximum Available Fee for that fiscal year will be the amount calculated by DOE in accordance with DEAR 970.15 (consistent with the FY 2001 fee computation methodology), multiplied by the ratio of the proposed FY 2001 Maximum Available Fee in (b)(1) above and $23,198,932. In the event the parties are unable to reach agreement on the Maximum Available Fee amount, the Government reserves the right to unilaterally establish the Maximum Available Fee amount.

(4) The Available Fee for FY 2001 - FY 2005 and Option Years FY 2006 - FY 2010 will be negotiated annually (or any other period as may be mutually agreed to between the parties) between the Contractor and the Government. The Available Fee will be equal to or less than the Maximum Available Fee defined in (b)(1) above. The Available Fee shall be established considering the level of complexity, difficulty, cost effectiveness, and risk associated with specific objectives/incentives defined in the Performance Evaluation Plan (PEP), including work involving multiple-site taskings/objectives. Higher or lower levels of complexity, difficulty, cost effectiveness, and risk will correspondingly allow a higher or lower available fee. The portion of this Available Fee defined as award fee or comprehensive incentive versus performance-based incentives will be determined for each period during the negotiation of the requirements in the PEP. In the event the parties are unable to reach agreement on the Available Fee amount, the Government reserves the right to unilaterally establish the Available Fee amount. The Contract will be modified to reflect the Available Fee for each period.

(5) RESERVED

(6) The fee amounts Available and Earned for the specified Contract Periods are set forth below:

Actual Contract Period	**Available Fee**	**Earned Fee**
November 1, 2000, through September 30, 2001		
Award Fee	$ 8,570,808	$ 7,530,985
Performance Based Incentives	$ 11,595,858	$ 8,604,587
Total Actual Available Fee	$ 20,166,666	$ 16,135,572

Actual Contract Period	Available Fee	Earned Fee
October 1, 2001, through September 30, 2002		
Award Fee	$ 6,692,250	$ 5,554,568
Performance Based Incentives	$ 15,307,750	$ 13,758,121
Total Actual Available Fee	$ 22,000,000	$ 19,312,689
October 1, 2002, through September 30, 2003		
Award Fee	$ 12,054,996	$ 10,849,496
Performance Based Incentives	$ 10,885,556	$ 10,339,015
Total Actual Available Fee	$ 22,940,552	$ 21,188,511
October 1, 2003, through September 30, 2004		
Award Fee	$ 16,310,939	$ 15,810,939
Performance Based Incentives	$ 9,889,061	$ 9,074,251
Total Actual Available Fee	$ 26,200,000	$ 24,885,190

Fee for the above period will be earned by the contractor based on performance related to both the comprehensive fee performance objectives and the performance based incentives, which are contained in the Performance Evaluation Plan.

(7) There will be no fee paid for the transition period.

(c) Beginning in Fiscal Year 2005 the maximum potential fee and the actual available fee for each fiscal year will be established by NNSA prior to the commencement of the applicable fiscal year in accordance with NNSA Policy Letter: BOP-003.0501 dated January 10, 2005 and incorporated into paragraph (c)(4) below by modification.

(1) Up to thirty-five percent (35%) of the actual available fee pool shown in (c)(4) below for a given contract period may be paid to the Contractor provisionally in equal monthly increments of one-twelfth (1/12) of the amount per month. This provisional fee payment is the only fee payment that will be made prior to the final fee determination. 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 FAR 52.232-17, Interest (JUN 1996).

(2) Estimated Budget –

(i) The estimated budget for FY2005 is $692,148,000.
(ii) The estimated budget for FY2006 is $682,699,000.
(iii) The estimated budget for FY2007 is $700,000,000.
(iv) The estimated budget for FY2008 is $790,472,000.
(v) The estimated budget for FY2009 is $760,178,000.
(vi) The estimated budget for FY2010 is TBD

(3) Work for Others Fee:

(i) The Work for Others fee percentage for FY2005 is 3.91% (85% of 4.6%).
(ii) The Work for Others fee percentage for FY2006 is 4.50% (85% of 5.3%).
(iii) The Work for Others fee percentage for FY2007 is 5.95% (85% of 7.0%).

(iv) The Work for Others fee percentage for FY2008 is 5.95% (85% of 7.0%).
(v) The Work for Others fee percentage for FY2009 is 5.95% (85% of 7.0%).
(vi) The Work for Others fee percentage for FY2010 is TBD.

(4) Cash Work - The amount of fee for work accomplished for other Management and Operating contractors will be negotiated between the two contractors.

(5) Available and earned fee amounts for the specified contract periods are:

Maximum Potential Available Fee: Amounts shown relate to the estimated budget in (c)(2) above. The fee obtained from work accomplished under paragraphs (c)(3) and (4) above are additive to the amounts shown below.

Contract Period	Maximum Available
October 1, 2004 through September 30, 2005	$45,280,710
October 1, 2005 through September 30, 2006	$44,662,551
October 1, 2006 through September 30, 2007	$45,794,393
October 1, 2007 through September 30, 2008	$51,713,121
October 1, 2008 through September 30, 2009	$49,731,271
October 1, 2009 through September 30, 2010	TBD

Actual Available and Earned Fee: Actual available fee will be earned by the contractor based on performance related to award fee (AF) objectives, high challenge fee, multi-site fee, and performance based incentives (PBIs) contained in the Performance Evaluation Plan.

Actual Contract Period	Available Fee	Earned Fee
October 1, 2004 through September 30, 2005		
Award Fee	$18,499,187	$16,538,795
Performance Based Incentives	$11,939,445	$10,947,995
Total Actual Available Fee	$30,438,632	$27,486,790
October 1, 2005 through September 30, 2006		
Award Fee	$18,261,085	$13,713,228
Performance Based Incentives	$16,100,783	$17,821,357
Subtotal	$34,361,868	$31,534,585
High Challenge Fee	$10,300,683	$ 5,037,250
Total Actual Available Fee	$44,662,551	$31,534,585
October 1, 2006 through September 30, 2007		
Base Fee (AF and PBIs)	$32,056,075	$27,703.338
Stretch Fee (AF and PBIs)	$ 9,158,879	$ 6,577,340
Subtotal	$41,214,954	$34,280,678
Multi-Site Fee	$ 4,579,439	$ 3,492,321
Total Actual Available Fee	$45,794,393	$37,772,999

Actual Contract Period	Available Fee	Earned Fee
October 1, 2007 through September 30, 2008		
Base Fee (AF and PBIs)	$33,613,529	$30,700,765
Stretch Fee (AF and PBIs)	$12,928,280	$10,374,765
Subtotal	$46,541,809	$41,075,530
Multi-Site Fee	$ 5,171,312	$ 5,171,312
Total Actual Available Fee	$51,713,121	$46,246,842
October 1, 2008 through September 30, 2009		
Base Fee (AF and PBIs)	$32,949,655	$TBD
Stretch Fee (AF and PBIs)	$11,808,489	$TBD
Subtotal	$44,758,144	$TBD
Multi-Site Fee	$ 4,973,127	$TBD
Total Actual Available Fee	$49,731,271	$TBD
October 1, 2009 through September 30, 2010		
Base Fee (AF and PBIs)	$TBD	$TBD
Stretch Fee (AF and PBIs)	$TBD	$TBD
Subtotal	$TBD	$TBD
Multi-Site Fee	$TBD	$TBD
Total Actual Available Fee	$TBD	$TBD

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 AMERICAN RECOVERY AND REINVESTMENT WORK

Total Funds authorized including maximum available performance fee, if any, for work funded under the American Recovery and Reinvestment Act (Recovery Act).

Year	Total Funds Authorized
2009	$213,600,000

The Contractor shall not start work funded under the Recovery Act until the Contractor receives a Work Authorization and funds are authorized by the Contracting Officer. The contractor is authorized to incur costs not to exceed the amount as stipulated under each project as defined by the amounts contained in the IEWOs and WAD. This must also be consistent with the other contract terms and conditions of the contract, including the Work Authorization(s) and the Work Authorization Directive. Additional fee, if any, for the performance of work under the Recovery Act shall be determined by NNSA in accordance with Section B-2, and applicable NNSA policy.

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SECTION C
DESCRIPTION/SPECIFICATION/WORK STATEMENT

DESCRIPTION OF WORK AND SERVICES

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PART I—THE SCHEDULE

Section C. Description/Specification/Work Statement

Description of Work and Services

C.1 GENERAL INFORMATION

(a) **Introduction**

This requirement is for the management and operation of the Y-12 NSC. A management and operating Contract is defined at FAR 17.6 and DEAR 917.6.

(b) **Background**

The Y-12 NSC is a Government-owned facility that supports national security programs through production of weapons components and parts; stockpile evaluation and maintenance; stockpile surveillance; dismantlement; and nuclear materials management, storage, and disposition. The facility is located in Oak Ridge Tennessee on approximately 3000 acres within the Oak Ridge Reservation in Bear Creek Valley. Defense Programs' facilities consist of over 5 million square feet in approximately 550 buildings including 13 major production facilities.

The Y-12 NSC is one of several production plants that are critical to the Department of Energy's (DOE's) Stockpile Stewardship Program. It's primary mission is the manufacturing of modern secondaries and processing and storage of highly enriched uranium.

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 Tennessee. The Y-12 NSC is operated under the direction of the Oak Ridge Operations 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.

(c) **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; health, safety and security systems; and purchasing and other administrative systems.

The overall performance objectives of this Contract are:

(1) Successfully restart enriched uranium operations in accordance with established schedule, technical scope and budget.

(2) Assure a safe, secure and reliable nuclear weapons stockpile through stockpile evaluation, maintenance, quality evaluation, enhanced surveillance capabilities and management of retired weapons.

(3) Develop by FY 2005 a fully integrated material management system including the completion of the Highly Enriched Uranium (HEU) storage facility and capability to produce new material.

(4) Develop the capability to deliver a first production-unit secondary within 36 months of receiving a request.

(5) Using Advanced Design and Production Technologies (AdaPT), deliver qualified stockpile life extension program refurbishment products upon demand at one-half the current cost, one-half the current time and zero stockpile defects by 2005.

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:

(1) Demonstrate a culture of continuous improvement for Y-12 NSC disciplines (such as disassembly and assembly of nuclear weapon components, conduct of operations, authorization bases, configuration control, technical basis, project management, product quality) through the application of appropriate performance-based metrics and rigorous self-assessment;

(2) Implement world class business practices such that the full set of manufacturing and evaluation operations can be performed on any weapon component at any time;

(3) 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;

(4) Develop and deploy effective, visionary strategic planning which is in alignment with the Department's missions and goals, and factors in changing budgets and technical and regulatory requirements;

(5) Through effective human resource management of the changing workforce, ensure the availability of critical skills and capabilities as needed;

(6) Ensure that the infrastructure and facilities are operationally safe, secure, compliant, and that an acceptable defined level of readiness is sustained to meet programmatic requirements.

Operational excellence is a desired underlying philosophy and mindset expected for all of the Y-12 NSC. This incorporates the principle that an integrated safety management system shall be used to perform Y-12 NSC 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 Y-12 NSC 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

(a) **Introduction**

Specific work requirements under this Contract will be established annually by the Contracting Officer in accordance with the Section H clause 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.

(b) **General Requirements**

(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:

(i) 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.

(ii) 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.

(iii) 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) 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 Y-12 NSC. The Contractor shall maintain national security mission competency and capability and be responsible for managing other non-DP work activities.

(c) **Directed Stockpile Work**

(1) Stockpile Evaluation and Maintenance (SEM) Program

The Contractor shall provide activities directed at determining the fitness of nuclear weapon warheads in the enduring stockpile and producing weapon-related hardware to support DOE and the Department of Defense (DoD) requirements. The Contractor shall produce production hardware, Joint Test Assemblies (JTAs), and other components as specified in DOE Program Control Documents (PCDs). These production activities shall support weapons in the enduring stockpile, including Life Extension Program (LEPs) and Limited Life Component Exchange (LLCE) hardware. Basic material streams, manufacturing and processing of components, dimensional certification, and assembly/ disassembly operations are key elements of this program. In support of these activities, the Contractor shall provide product and process engineering, systems planning, production control and tracking, and liaison with design agency laboratories. The Contractor shall provide support activities regarding future Stockpile Life Extension Programs to include, but not be limited to, concurrent engineering and strategic planning.

(2) Quality Evaluation (QE) and Surveillance

The Contractor shall provide the activities required to assess the integrity of the nuclear weapons stockpile including safety, reliability, design compatibility, and functionality of components over the weapons stockpile life. The condition of weapon components in the enduring stockpile shall be determined through non-destructive analysis, dismantlement, and component testing. The quality evaluation program shall be supplemented by surveillance activities that include the testing and evaluation of accelerated aging units, production core samples, and shelf-life units. These units and/or components never enter the stockpile, but provide additional baseline data that are used to judge a warhead's condition throughout its stockpile life. Test data shall be provided in electronic format to the responsible design agency for evaluation of overall system reliability.

(3) Nuclear Packaging Systems (NPS)

The Contractor shall provide the activities required for safe, efficient and economical packaging for transporting and storing weapon components and assemblies, radioactive materials, and other materials within, to, and from the Y-12 NSC. The packaging must fully comply with DOE Orders as well as other Federal, state, tribal, and international regulations, requirements, and standards. Key elements of the program include: (1) providing design, development, and test support for new packaging systems; (2) preparing Safety Analysis Reports for Packaging (SARP); (3) maintaining a special procurement base for packaging needs; (4) maintaining a tracking system for required maintenance, testing, and inspection for certain

containers; and (5) implementing a rigorous quality assurance program that complies with DOE and other applicable regulations and industry standards.

(4) Weapons Receipt, Dismantlement and Disposal

The Contractor shall provide the activities required for the dismantlement of weapon systems that have been retired from the nuclear weapons stockpile. Warhead components received from the military or the Pantex Plant shall be stored or staged at the Y-12 NSC in various materials access areas while awaiting dismantlement. The Contractor shall design and manufacture a variety of machine tools, hand tools, and specialty tools to machine, cut, press, or break the components apart. Procedures, equipment, and training shall be designed and developed to enhance protection of personnel health and safety, and the environment. Components containing nuclear or special materials shall be sent to the appropriate processing operation for material recycle or reuse. Other components shall be destroyed by melting and recasting, pyrolysis, or chemically altering the material to remove classified features. The Contractor shall perform program planning to balance dismantlement workload, material needs, storage capacity, waste minimization, and resources.

(d) **Campaigns**

(1) Enhanced Surveillance

The Enhanced Surveillance Campaign develops the tools needed to predict or detect the precursors or age-related defects before they jeopardize warhead safety, reliability or performance. Material, component, system characterization, and predictive modeling and simulation are central to this activity. With sufficient lead time, the necessary redesigns, refurbishments, and re-certifications can be made efficiently and cost effectively within the capabilities and capacity of a “right-sized’ manufacturing complex. The Enhanced Surveillance Campaign develops the technologies and methods, as well as the fundamental understanding of materials properties and weapons science, to improve detection and predictive capabilities. These capabilities will be used to develop new estimates for weapon lifetimes. The end state for this campaign is defined as: Provide lifetime assessments and the quantitative decision basis for future life extension programs.

(2) Advanced Design and Production Technologies (ADaPT)

The ADaPT Campaign is designed to accelerate and advance product realization technologies by developing capabilities to deliver qualified refurbishment products cheaper, better, and quicker. This Campaign will develop modeling and simulation tools and information management technologies to enable full-scale engineering development with minimal hardware prototyping, and through totally paperless processes, for monitoring weapon refurbishment activities. The major elements of ADaPT include Process Development, and Enterprise Integration, Integrated Product and Process Design/Agile Manufacturing. The end state for this campaign is defined as: Provide the capability to deliver qualified stockpile life extension program refurbishment products upon demand at one-half current cost, one-half the current time and with zero stockpile defects by 2005.

(3) Material Readiness

The Material Readiness Campaign includes activities to support the construction of a new Highly Enriched Uranium (HEU) storage facility at Y-12 NSC. This will result in the consolidation of long-term HEU material at a state-of-the-art facility. The end state for this campaign is defined as: Develop by FY 2005 a fully integrated material management system supporting strategic material needs with either stockpiled material or the capability to produce new material.

(4) Secondary Readiness

The Secondary Readiness Campaign will ensure future manufacturing capabilities (equipment, people, and processes) are in place and ready for production of secondaries. This includes the reestablishment of special materials processing, replacement of sunset technologies, development of technical work force competencies, and the development of component certification/re-certification techniques. This Campaign develops, implements, and maintains the appropriate capability and capacity to accomplish Directed Stockpile Work, and responds to surge production scenarios to manufacture/re-manufacture replacement components for all weapon systems in the active stockpile. The end state for this campaign is defined as: Develop the capability to deliver a first production-unit secondary within 36 months of receiving a request.

(e) **Readiness in Technology Base and Facilities**

(1) Facilities and Manufacturing Processes

(i) Facility Program

The Contractor shall provide activities to effectively manage 13 major production facilities and the related facility systems that are key to DP. Activities shall include facility management, maintenance and utilities, and ES&H compliance. In addition, the Contractor shall perform specific projects related to non-routine repairs, maintenance, or alteration of the facility and/or facility systems.

(ii) Modernization and Facility Transition Program (M&FT)

The Contractor shall provide activities directed at the following: (1) implementation of the Y-12 NSC Site Integrated Modernization program, (2) reducing the DP's manufacturing footprint; (3) coordinating and integrating with the Secondary Readiness Campaign and ADaPT Campaign; and (4) managing activities to safely and compliantly shutdown and maintain surplus DP facilities, including the decontamination of indoor and outdoor areas to reduce DP costs. The Y-12 NSC Activity Implementation Plan defines the manufacturing area footprint to be achieved. Surplus facility management shall include preparing facilities for either transfer to the DOE's Office of Environmental Management, reuse by other DOE and/or non-DOE entities, long-term Surveillance and Maintenance (S&M) by DP, or demolition.

(iii) Material Surveillance

The Contractor shall provide the activities to support the following: (1) Building 9206 maintenance, safety management, radiation control, and activities to maintain safe stand down conditions until phase out can be accomplished; (2) receipt, measurement, packaging, and shipment of Central Scrap Management Office (CSMO) material; (3) safety analysis, maintenance, operating procedures, engineering support, and nuclear materials control and accountability for Special Chemical Processing; (4) maintenance, accountability, and disbursement of DOE precious metals.

(iv) Manufacturing Processes Program (MPP)

The Contractor shall provide support for multiple projects and tasks that are focused on supporting the existing and future manufacturing footprint and production requirements. These activities shall include: (1) implementation of manufacturing-based information systems that support weapons production, special nuclear material (SNM) accountability, production scheduling and flow, surveillance, retirement, process knowledge archiving, and preservation of production and certification records; (2) implementation of classified computing systems; (3) implementation and management of the Chronic Beryllium Disease Prevention Program (CBDPP) for active, inactive, and legacy beryllium-contaminated areas, (4) support for pollution prevention and Technical Fellowship programs; and (5) maintenance of key manufacturing processes.

(v) Nuclear Materials Management and Storage (NMM&S) Program

The Contractor shall provide the following activities: (1) planning, designing, providing, and maintaining storage facilities for the safe and secure storage of nuclear materials; (2) multi-year program planning to ensure nuclear weapon components and materials throughout the DOE Complex are returned to the Y-12 NSC and prepared for interim or long-term storage; (3) nuclear materials planning, forecasting, and scheduling as the integrator for multiple programs utilizing nuclear materials, such as Dismantlement, Stockpile Maintenance, Fissile Materials Disposition, Nuclear Nonproliferation, and Work for Others; (4) supporting development, design, and implementation of innovative and cost-saving technologies for monitoring and storage of nuclear materials while reducing costs and/or risks; (5) developing and maintaining technical standards for the storage of HEU, lithium, and canned subassemblies; (6) developing and implementing projects to disposition, monitor and maintain HEU in safe, optimum storage. The storage of metal and oxide forms in Material Access Areas (MAAs) and the storage of lithium, beryllium, depleted uranium, natural uranium, deuterium, and non-nuclear weapons components, tooling, and other miscellaneous production materials in non-MAAs shall be supported. The Contractor shall also support International Atomic Energy Agency inspections.

(vi) Material Recycle and Recovery (MRR)

The Contractor shall provide the activities required to recycle and recover highly enriched uranium (HEU) and lithium from parts resulting from retired weapon systems, quality evaluation weapons tear downs; residue materials from component manufacturing processes; unirradiated, DOE-owned, enriched uranium from other DOE sites or commercial and private facilities throughout the country; foreign or other miscellaneous sources; and residue and scrap materials generated from operations throughout the Y-12 NSC. The materials shall be processed through various recycling and purification operations to convert the materials into measurable, safe, economical, and unclassified forms and products for reuse or storage.

(vii) Enriched Uranium Operations (EUO) Process Based Restart

The Contractor shall provide the activities required to resume EUO and related support at the Y-12 NSC for production of nuclear weapon components or other hardware that satisfies national priority requirements. The activities include development of adequate technical basis, criticality safety requirements, procedures, and the development and execution of required qualification/certification for chemical operators; maintenance and testing of systems and issuance of engineering drawings; activities required to develop and maintain the safety authorization basis; project management including self-assessment and readiness reviews; and startup of systems. Prior to resumption, compensatory measures are provided to ensure safe maintenance of facility conditions.

(2) Environment, Safety, and Health (ES&H)

The Contractor shall conduct all activities in a manner that ensures the protection of the workforce, the public, and the environment. All activities at the Y-12 NSC are to be conducted safely and effectively, in compliance with applicable ES&H laws, regulations, orders, and in a manner commensurate with the associated hazard. A system shall be in place to implement existing Standards/Requirements Identification Documents (S/RIDs) and Work Smart Standards consistent with Section I clause entitled ***"Laws, Regulations and DOE Directives."*** The Contractor shall manage and perform work in accordance with a documented Integrated Safety Management System (ISMS) as required in DEAR clause 970.5223-1 in Section I, entitled ***"Integration of Environment, Safety and Health into Work Planning and Execution."***

The Contractor shall oversee and be accountable for all ES&H activities under the contract, including implementation of ES&H practices through individual subContractors who may perform work tasks. A system of internal oversight to assure that ES&H objectives are met shall be developed and implemented.

(i) Environmental Program

The Contractor shall provide programs to ensure compliance with applicable laws, regulations, and DOE Orders, including but not limited to, the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and National Environmental Policy Act. The Contractor shall be responsible for

day-to-day interactions with regulatory agencies regarding permit and environmental compliance related issues, including negotiating and paying fines and penalties it incurs. Per Section I, fines and penalties are not considered allowable costs. The Contractor shall be responsible for obtaining and maintaining necessary permits and submitting reports required by permits. Environmental monitoring and surveillance programs shall be established and maintained to support compliance activities.

The Contractor shall manage and perform waste management activities to support Y-12 NSC operations, including waste minimization/pollution prevention, recycling, waste characterization, treatment, storage, and disposal. Wastes to be managed by the Contractor include, but are not limited to, sanitary waste, hazardous waste, PCB waste, radioactive waste, and mixed waste.

The Contractor shall assist DOE in technical document reviews, programmatic logistical support, and coordination of the Agreement in Principle with the State of Tennessee and other grant or cooperative agreement activities as defined by DOE.

(ii) Safety Program

The Contractor shall provide programs that effectively reduce the potential for workplace accidents and injuries, and to ensure compliance with applicable laws, regulations, and DOE Orders. Examples of programs to be maintained include Industrial Safety, Hazardous Materials Management, Transportation and Packaging Safety, Nuclear and Facility Safety, Construction Safety, Fire Protection, and Criticality Safety. The safety program shall include a fully implemented Integrated Safety Management Program that accomplishes all work and is protective of workers, the public, and the environment. The Contractor shall develop and administer Process Safety Management/Risk Management and Price-Anderson Amendment Act programs. The Fire Protection Program shall include a fire fighting response capability. The criticality safety program shall fully address all elements of applicable national consensus standards.

(iii) Health Program

The Contractor shall administer a health program that includes Industrial Hygiene (IH), Radiological Control, and Occupational Medicine. The IH program shall provide a work environment that protects the health and well-being of employees, visitors, Contractors, and the community by the recognition, evaluation, and control of chemical and physical stresses arising in and from the workplace. The Radiological Control Program shall protect against radiological hazards in the work environment, to prevent the release of radioactive contamination, to protect the public against exposure to ionizing radiation with the expectation that exposure will be maintained as low as reasonably achievable, and provide site-wide radiological surveillance and maintenance. The Occupational Medicine Program shall assist in promoting

and maintaining the health of employees. The program shall provide for protection of the worker through medical surveillance, diagnosis and treatment of job-related illness and injury, wellness and other preventive medicine programs. Physicians will conduct the medical surveillance programs.

(iv) Quality Assurance

The Contractor shall implement a Y-12 NSC Quality Assurance program that meets the requirements of 10 CFR 830.120, DOE Order 414.1A and QC-1. The program shall include but not be limited to development and implementation of issues management, technical audits, corrective actions, root cause analysis, etc.

(3) Capital Program

The Capital Program includes project management activities directed at providing new and modified equipment and facilities in support of DP missions and other national security missions assigned to the Y-12 NSC. The capital program is based upon Y-12 NSC strategic planning documents and the DOE Stockpile Stewardship Plan. The capital projects provide enhanced mission capabilities and improvements to the Y-12 NSC infrastructure, as well as address a variety of ES&H issues. The principles of integrated safety management shall be applied from the beginning preliminary planning stages throughout the life of any project. This program includes:

(i) Strategic Systems (formerly Major Systems Acquisitions)

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 NSC in the design and construction of funded strategic system projects in accordance with the approved FY budget and individual project authorizations. These projects are funded by multi-year Congressional authorizations and typically extend over five years or longer with Total Estimated Costs (TEC) greater than $400 million or with risk factors such as international implications, stakeholder interest and/or national security. These projects are the more complex, critical, and highly visible within DOE and will be managed with dedicated project team personnel.

(ii) Line Item Projects

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 NSC in the design and construction of funded line item projects in accordance with the approved FY budget and individual project authorizations. These projects are funded by multi-year Congressional authorizations and typically extend over three to five years and generally range in TEC from $5 to $400 million. These projects are managed on a graded approach with significant DOE interaction.

(iii) General Y-12 NSC Projects (GPP)

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 NSC in the design and construction of funded projects less than $5 Million in TEC in accordance with the approved FY budget and a single yearly project authorization. These projects typically extend over one to two years, are managed primarily by the Contractor, with oversight by DOE and interaction on an exception basis.

(iv) General Y-12 NSC Equipment (GPE)

The Contractor shall provide activities associated with the acquisition and installation of basic capital equipment that will be utilized to support the Y-12 NSC mission requirements in accordance with the approved budget. These projects can extend over one to two years and range up to $2 Million in TEC, and are managed primarily by the Contractor with oversight by DOE and interaction on an exception basis. Major Items of Equipment (MIEs) are significantly larger acquisitions which are individually authorized and more closely managed.

(v) Capital Planning

The Contractor shall provide capital planning activities required to determine and justify mission needs, identify and validate proposed projects, and provide necessary advance planning documentation as needed to submit and support projects in the capital budget cycle.

(4) Asset Management

Asset Management includes Engineering and Construction, Real and Personal Property Management, Utility Operations and Services, and Maintenance. The Contractor shall provide the following:

(i) Engineering and Construction

The Contractor shall provide or procure overall integrated engineering and construction support services for Government-owned facilities within the Y-12 NSC under this contract. Specific functions include engineering design, procurement, and construction services; project management and construction management services; systems engineering; configuration management; and construction safety management. Construction services other than routine and miscellaneous Y-12 NSC support activities shall be procured by subcontract**.** These functions are required as necessary to plan, design, construct, modify, and manage Y-12 NSC facilities, as well as support other areas of this SOW.

(ii) Real and Personal Property Management

The Contractor shall provide land and facilities management services for the Y-12 NSC within the Security 229 Boundary area consistent with the Contractor requirements stated in DOE Order 430.1B, Real Property Asset Management (RPAM). Specifically, the Contractor shall be responsible for: (1) Planning – generate and maintain a Ten Year Comprehensive Site Plan (TYCSP) for the Y-12 AOR 229 Boundary area; (2) Documentation -

Document all real property management activities; (3) Facilities Information Management System (FIMS) – keep current, verified data on all lands, buildings, trailers, and other structures and facilities (OSFs) owned by NNSA; (4) Real Estate – submit to NNSA and maintain all required records of real estate actions, and maintain an approved land-use and management process; (5) Maintenance – maintain real property assets in a manner that promotes operational safety, worker health, environmental compliance, property preservation and cost-effectiveness while meeting program missions; (6) Disposition and Long-Term Stewardship – prepare real property assets for disposition when the assets are no longer required to support missions, and; (7) Value Engineering (VE) – use VE techniques in a tailored manner to reduce DOE's real property asset ownership costs while maintaining the necessary level of performance and safety. Real estate acquisitions are excluded from VE. (8) K1650 - the Emergency Operations Center - at ETTP. (9) Transportation facility across the road from ETTP

The Contractor shall assist NNSA in appropriately coordinating real property management activities occurring within the Y-12 NSC Security 22 Boundary with DOE-ORO, other DOE Programs, other DOE-ORO or NNSA Contractors, and other tenant organizations. The Contractor shall provide overall landlord and custodial services for real and personal property owned by NNSA at the Y-12 NSC, including motor vehicle and fleet operational maintenance services.

(iii) Utility Operations and Services

The Contractor shall provide utility operations and management services that include support for all electric service, fuel oil, natural gas, potable water/sewer service, purified water, nitrogen, steam, condensate, chilled water, and non-potable hot water operations and utility services, whether contracted for or by the Contractor or DOE. Included in Contractor's responsibility is the operation of boiler/chiller plants, utility systems, procured utilities, and management of the Y-12 NSC in an energy efficient manner in accordance with developed energy management plans.

(iv) Maintenance Program

The Contractor shall provide maintenance activities including coordinating and accomplishing new equipment and facility installations, custodial services, Y-12 NSC upkeep, grounds maintenance, rearrangements, modifications, and special project services for facilities, maintenance and repairs consistent with good management and safe maintenance practices and support to the Y-12 NSC infrastructure for all maintenance and service activities. Maintenance program shall include a multi-year maintenance plan that is designed to accomplish all required corrective maintenance and preventive maintenance activities to support Y-12 NSC operations utilizing available resources.

(5) Site Services

Site Services shall include the following programs: Safeguards and Security, Emergency Operations, Waste Management and Analytical Services.

(i) Safeguards and Security Program

The Contractor shall provide overall management and operations of the safeguards and security activities and responsibilities including physical security, information security, personnel security, management of nuclear material control and accountability (MC&A), cybersecurity, OPSEC, classified matter protection and control, incidents of security concern (limited to B&W Y-12 and its subcontractors), safeguards and security awareness, badging, and all performance testing functions not associated with Protective Force Performance Testing. Protective Force Operations are not within the scope of this contract.

(ii) Emergency Operations Program

The Contractor shall provide an Emergency Management Program for the Y-12 NSC to protect workers, the public, the environment, and National Security in the event of an operational emergency involving or affecting Y-12 NSC operations. The Contractor shall fulfill responsibilities as the "lead Contractor" for the within the Y-12 NSC Emergency Response Boundary (Y-12 ERB) as defined in the "United States Department of Energy Oak Ridge Reservation Emergency Plan."

The Contractor shall support funding of the Y-12 NSC and Oak Ridge Reservation Emergency Management Program as directed and manage, operate and maintain any Oak Ridge Emergency Management Program assets for which the Contractor is assigned responsibility. This responsibility includes designated structures located outside the Y-12 ERB, such as the K-1650 facility at the East Tennessee Technology Park (ETTP). The Contractor shall also support Y-12 NSC integration with other federal agencies, such as DOE-Oak Ridge Operations for Lead Federal Manager interactions, DOE-Office of Environmental Management (EM) for emergency management of EM facilities located at Y-12, and NNSA-Office of Secure Transportation (OST) for integration of response elements between OST and the Y-12 Emergency Response Organization.

The emergency management program shall be conducted in accordance with applicable laws, regulations, orders, the Y-12 NSC Emergency Management Program, and the Oak Ridge Reservation Emergency Management Program command media; and commensurate with the associated hazards. A system shall be in place to implement existing emergency management S/RIDs consistent with the Section I clause entitled "Laws, Regulations and DOE Directives." Emergency Management shall be included as an integral part of the ISMS of the Contractor.

(iii) Analytical Services

The Contractor shall provide a full service analytical laboratory that can perform chemical, physical, and radiological testing in support of the defense and national security mission, environmental compliance, worker protection and safety, and monitoring of environmental trends. The Contractor shall be able to perform organic, inorganic, and radio-chemical contaminant analysis in environmental samples, provide bioassay analysis, and materials testing.

(6) Management and Administration

The Contractor shall provide resources for general management, human resources, public relations, information management systems, computer services, training, financial management, budgeting, business management, purchasing, legal services, quality, cafeteria operations, and other administrative services.

(f) **Non-DP Work Scope**

The Contractor shall be responsible for the management and operation of programs associated with other non-DP funding sources, DOE funding sources, and other funding necessary for complementary work as approved by DOE. These programs include Work for Others; Technology Partnerships; Advanced Technologies.

(1) Work for Others (WFO) Program

The Contractor shall utilize unique equipment, processes, and expertise to provide materials, services and products to support key missions of the non-DP, other Federal agencies, local Government, state Governments, foreign Governments, universities, and private industry. Although done on a reimbursable and non-interfering basis, this work exercises and enhances critical equipment and processes required for the Y-12 NSC to maintain it's weapons production capabilities.

(2) Technology Partnerships Program

The Contractor shall provide the activities to support the creation and maintenance of partnerships between DOE and industry that benefit DP R&D objectives and support the achievement of the Stockpile Stewardship Program. This work takes advantage of partnerships with industry through cooperative research and development agreements, outreach and direct assistance programs, user agreements and facilities, and education and training. Support shall be provided to continuing small business technical assistance programs with Tennessee industry; and partnerships with the State of Tennessee in Manufacturing Means Jobs, Manufacturing for the New Millennium and the Governor's School for Manufacturing initiatives. The partnerships must complement core capabilities, provide access to additional funding, and enrich the science and technology base at Y-12 NSC.

(3) Advanced Technologies

The Contractor shall provide the activities required for integration of scientific and technological work among the National Security Programs (NSP), Applied Technologies, and Technical Computing; and facilitate the necessary integration of work with Y-12 NSC Weapons Program, Manufacturing, Technical Operations and Protective Services activities, and with the Oak Ridge National Laboratory.

(i) National Security Programs (NSP)

The Contractor shall provide the activities required for conducting program management and technical assessment activities in areas of arms control, nonproliferation and threat reduction, special technologies, safeguards and security, and fissile material disposition; and management of DOE's Field Intelligence Element for Oak Ridge intelligence programs.

(ii) Technical Computing (TC)

The Contractor shall provide comprehensive technology expertise to analyze, design, develop, and implement information security, imaging technology, advanced communications, and provide systems integration to solve diverse problems affecting mission performance. This program supports key missions of DOE, other Federal agencies, local Government, state Government, foreign Government, and private industry.

(4) All Other DOE Funding

The Contractor shall provide support for the All Other DOE Funding Program which includes multiple-funded activities that permit DOE to capitalize on the investment made in the Y-12 NSC's unique capabilities, capacities, and location. The broad range of activities includes: research & development, production, and testing required to fully support the approved missions of the Y-12 NSC and DOE. The activities include transportation safeguards, research and development, design agency cash work, HEU disposition, precision engineering and advanced manufacturing, supply of nuclear material products, enrichment facility financial management and programmatic support, other service requests, accelerated strategic computing initiative (ASCI) nuclear test unit characterization, and analytical services.

(g) **Related Services**

In addition to the services specifically described in other provisions of this SOW, the Contractor shall perform services from time to time as DOE and the Contractor shall agree in writing under this contract at Oak Ridge or elsewhere, as follows:

(1) Services incidental or related to the services described in other provisions of this SOW;

(2) Services, using existing or enhanced facilities and capabilities, for the NRC, under interagency agreements between NRC and DOE;

(3) Services in support of ORO when the work involved has been determined by DOE to be within the unique capabilities of the Contractor or when the work involved has been determined by DOE to be within the special scientific and technical capabilities of the Contractor and the urgent need for the services precludes acquiring them from another source;

(4) Services to support other ORO Contractors, to the extent available, in conducting any and all activities; and

(5) Services by DOE to perform maintenance and service functions outside the Y-12 NSC areas. This includes the development and implementation of related policies and procedures, as appropriate.

C.3 PLANS/DELIVERABLES

All deliverables including those specified below shall be submitted to DOE/COR by the Contractor for approval, no later than 60 days after initiation of the contract transition (unless other instructions are provided in specific clauses).

Security Plan (DOE Order 470.1)

Quality Assurance Plan (10 CFR 830.120)

Safety Management System Description (DEAR Clause 970.5204-2)

Radiation Protection Plan (10 CFR 835)

Letter of concurrence accepting the existing U.S. DOE Oak Ridge Reservation Emergency Plan

Material Control and Accounting Program Plan (DOE 5633.3B)

Authorization Agreements

Standards/Requirements Identification Document (S/RIDs) and Work Smart Standard Set for Engineering and Construction

Financial Management Systems Plan

In addition, draft Work Authorization Directives (WADs) and a Performance Evaluation and Measurement Plan (PEMP) must be submitted to DOE in order to support approval prior to the start of each Fiscal Year. In developing the PEMP with DOE, the Contractor shall utilize its Implementation Plan, including milestone and measurable commitments, submitted as part of its proposal for the Contract periods of October 1, 2000 through September 30, 2002.

The Contracting Officer may require additional reports, analysis, or other information relevant to the Y-12 NSC 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. The Contractor shall comply with all changes to assigned work. The Contractor shall manage and operate the Y-12 NSC for the DOE in a manner that ensures the safety of the public and the Y-12 NSC's work force and instills public confidence.

Pursuant to the I 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 in Section J, Attachment E.

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SECTION D
PACKAGING AND MARKING

RESERVED

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SECTION E
INSPECTION AND ACCEPTANCE

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SECTION E
INSPECTION AND ACCEPTANCE

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

(a) "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 by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or terminate the contract for default.

E.2 ACCEPTANCE

Acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

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SECTION F
DELIVERIES OR PERFORMANCE

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SECTION F
DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT

The transition period for this contract commenced on the effective date of the award which was August 31, 2000, and continued through September 30, 2000. The term of this contract is from the effective date of contract award through September 30, 2010, which includes the transition period.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance for the contract is Oak Ridge, Tennessee.

F.3 RESERVED

F.4 RESERVED

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

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

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

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

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

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

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

F.6 TRANSITION ACTIVITIES

(a) During the period of the transition, specified in the clause in Section F entitled, "Term of Contract," the Contractor shall perform those activities essential to assume responsibility for the contract work on November 1, 2000. The essential transition activities shall be conducted in accordance with the Contractor's baselined Transition Schedule dated September 22, 2000 and its revised budget dated September 14, 2000.

The Contractor shall coordinate its activities with DOE and the incumbent Contractor so as to accomplish these activities in a manner that will provide an effective transition of personnel and work activities while minimizing the cost of this effort. The Contractor shall also establish effective communications with other DOE on-site prime Contractors as necessary.

The due diligence activities pursuant to Clause I.113 "Pre-existing Conditions" will be done in two phases in accordance with Babcox & Wilcox Technical Services Y-12, LLC's (B&W Y-12) Due Diligence Plan. The Transition Phase will include high level walkdowns of all facilities in accordance with B&W Y-12'sdetailed checklists. The results f these walkdowns will be submitted periodically during transition. Checklists describing Post-Transition Phase activities will be submitted before the close of Transition. Post Transition Due Diligence Walkdowns will be completed and a final report submitted by April 30, 2001.

(b) The Contractor shall utilize any government furnished facilities and equipment that are available in order to minimize costs. The Contractor may, subject to agreement with the incumbent Contractor, utilize incumbent Contractor personnel on a loaned basis or arrange for early transition of employees to the Contractor as appropriate. In addition, the Contractor may utilize the services of subContractors of the incumbent Contractor with agreement from the incumbent Contractor.

(c) Costs of Transition are as follows:

Total Direct Labor, fringe	$2,771,912
Overhead & G&A	
Facilities, supplies, etc	163,720
Temporary living and travel	675,841
Relocation expenses	984,655
Subcontracts	140,300
G&Aon Non-Labor Costs	263,572
Total Transition Costs	$5,000,000

The allowable portion of Relocation expenses for the Management Team will be considered Transition Costs if incurred between September 01, 2000 and September 30, 2001.

The Contractor shall report costs to DOE on a weekly basis in the same format that has been previously agreed to for the Cost, Schedule & Issues Report. The total transition costs are not to exceed

$ 5,000,000 without the prior approval of the DOE Contracting Officer.

(d) The Contractor shall submit monthly invoices to the addressees prescribed below:

Original to:

U.S. Department of Energy
Oak Ridge Operations Office
Oak Ridge Financial Service Center
ATTN: Payment Services and Accounting
P.O. Box 6017
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy
Oak Ridge Operations Office
ATTN: Mark Livesay
P.O. Box 2001
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy
Oak Ridge Operations Office
ATTN: William Wistrom
Contracting Officer
P.O. Box 2001
Oak Ridge, Tennessee 37831

The Contractor shall provide one copy of all reports prepared as part of this transition, including but not limited to, readiness reports, readiness plans, status reports, assessments, etc. to the DOE Contracting Officer's Representative for Transition.

(e) In addition to communications as described in paragraph (a) above, the Contractor shall provide to DOE on a timely basis the schedules for transition activities including facility walkdowns and assessments and program reviews.

While open and direct communication is essential between all parties, official contract direction or interpretation can be provided only by the Contracting Officer and the Contracting Officer's Representative for Transition.

(f) The Readiness Determination process will consist of the following major elements:

(1) The Contractor will declare its readiness to assume operations. Readiness will be documented by a log of sign off sheets for each essential milestone executed by the B&W Y-12, LMES, and DOE leads for each milestone plus the DOE Transition Manager.

(2) The Contractor will then conduct a review of the actions and activities that have taken place during the transition to demonstrate to DOE the adequacy and effectiveness of its preparations for assuming operations. This review is to be held prior to the end of the transition period to allow any remaining concerns to be addressed.

(3) The Contractor will prepare a "Transfer Agreement" which is to be signed by B&W Y-12, the Department of Energy, and Lockheed Martin Energy Systems, Inc. prior to November 1, 2000.

SECTION G
CONTRACT ADMINISTRATION DATA

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SECTION G
CONTRACT ADMINISTRATION DATA

G.1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE/MATTERS

All correspondence submitted by the Contractor (except for invoices and reports) shall be subject to the following procedures:

(a) Technical Correspondence. Technical correspondence concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.

(b) Other Correspondence. All correspondence, other than technical correspondence, shall be addressed to the CO or Contract Specialist with information copies of the correspondence to the DOE COR, and to the DOE Assistant Chief Counsel for Intellectual Property (where patent or technical data issues are involved).

(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, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, TN, 37831, with an information copy to the CO and the COR.

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

(e) "SUBJECT: Contract No. [ ] (Insert the contract number) [ ] (Insert subject topic after contract number, e.g., "Request for subcontract placement consent")".

G.2 CONTRACT ADMINISTRATION

The contract will be administered by:

U.S. Department of Energy
National Nuclear Security Administration
Y-12 NSC Area Office
ATTN: Contracting Officer
P.O. Box 2001
Oak Ridge, Tennessee 37831

Written communication shall make reference to the contract number and shall be mailed to the CO at the above address.

G.3 CONTRACTING OFFICER'S REPRESENTATIVE

The COR will be designated by separate letter and will represent the CO in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the SOW will be made only by the CO by properly executed modification(s) to the contract. Additional COR(s) for other purposes as required may be designated in writing by the CO.

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SPECIAL CONTRACT REQUIREMENTS

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SECTION H
SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror, dated May 5, 2000 for this contract are, by reference, hereby incorporated in and made a part of this contract.

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other clauses of this contract, the CO shall be the only individual authorized to:

(a) Accept nonconforming work,

(b) Waive any requirement of this contract, or

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

H.3 SUBCONTRACT LABOR LAW APPLICATION

(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, refer to the Contract Clause entitled “Government Facility Subcontract Approval” in Section I.

H.4 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

The "master" Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals for the period October 1, 2000, through September 30, 2005, submitted by the Contractor consistent with the provisions of the clause entitled, “Small Business Subcontracting Plan” in Section I, and approved by the CO on , is incorporated in and made a material part of this contract as Attachment C in Section J. Prior to the beginning of each FY, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals as described in paragraph (d)(1) and (2) of the clause entitled "Small Business Subcontracting Plan" in Section I, to remain in effect for each FY. The annual plan shall be reviewed for approval by the CO and shall be incorporated by reference as a material part of this contract. (The first “annual” subcontracting plan will cover the period from October 1, 2000, through September 30, 2001).

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

On November 1, 2000, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment, "as-is, where is" based on existing Personal Property Accountability records, from Contract No. DE-AC05-84OR21400. The Contractor shall be accountable for Government-owned property and equipment in accordance with the provisions of the clause entitled ***"Property"*** in Section I of this contract.

H.7 APPROVAL OF EXPENDITURES

Whenever approval or 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 MANDATORY USE OF SYSTEMS, APPLICATIONS, AND PRODUCTS IN DATA PROCESSING (SAP) SYSTEMS AND SOFTWARE

The Contractor shall utilize the SAP computer systems and related software existing at the time of contract award. Any deviation from this requirement is subject to the prior written approval of the CO.

H.9 ASSIGNMENT OF EXISTING AGREEMENTS AND SUBCONTRACTS

(a) On November 1, 2000, existing agreements and subcontracts entered into by the incumbent Contractor under Contract No. DE-AC05-84OR21400 shall be assigned to the successor Contractor. The agreements and subcontracts shall include but not be limited to all subcontracts and purchase orders: memorandums of agreement; memorandums of understanding; CRADA; licenses; agreements with domestic and foreign research organizations, agreements with universities and colleges; agreements with local and state governments; partnership agreements; user agreements, financial (banking) account agreement; and other similar agreements.

(b) The terms and conditions of these agreements and subcontracts, as they exist when assigned, shall remain in full force and effect unless modified by the Contractor and the agreement participant(s) or the Contractor and the Subcontractor.

H.10 PRIVACY ACT SYSTEMS OF RECORD

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

DOE System No.	Title
DOE-5	Personnel Records of Former Contractor Employees
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Reports
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Recards

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. Mutually agreed changes made before formal incorporation into the Contract 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's Section I 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 DOE or the Government; however, nothing herein shall require the establishment of an employer/employee relationship between the Contractor and consultants and 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 cost 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 employees 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 Section I clause entitled "Payments and Advances," or as otherwise directed by DOE, the amounts paid by the Contractor to the employees or other persons, or contributed to any benefit plans for such employees, from Government funds, which relate to such employees' work for the Contractor not in the performance of this contract. Said amount or amounts shall include, but not be limited to, travel, per diem, and surviving spouse payments, if any, and the 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 as set forth in Section J, Attachment A, “Advance Understanding on Human Resource Costs,” to this contract. The aforementioned factor shall be established for each ensuing year as mutually agreed between the CO and the Contractor.

H.13 CONTRACTORS MANAGERIAL PERSONNEL

For the purpose of identifying the Managerial Personnel defined in the Contract Clause in Section I entitled “Property” and the references to Managerial Personnel in the Contract Clause in Section I entitled “Insurance Litigation and Claims,” they are the same personnel as those Key Personnel identified in Section J, Attachment D, “Key Personnel” to this Contract.

H.14 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.15 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2001)

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

H.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 TRAVEL RESTRICTIONS (JAN 2001)

(a) For Contractor travel expenses incurred on or after October 1, 2000, a ceiling limitation of $5,150,000 shall apply to all reimbursements made for Contractor travel expenses funded by the Energy and Water Development Appropriations Act under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer.

(b) Some travel costs are exempt from the ceiling, examples are:

(1) Travel performed under work for others agreements;

(2) Travel of subContractors;

(3) Travel of non-DOE users to participate in experiments at DOE user facilities;

(4) Travel costs of travel management centers;

(5) Travel costs funded by other appropriations;

(6) Relocation costs;

(7) Costs of workshops/seminars (other than travel costs), such as, rental of meeting rooms, public address equipment, speakers' fees;

(8) Registration costs of training classes;

(9) Travel expenses within the Laboratory Directed Research and Development Program; and

(10) Travel associated with recruitment.

(c) Notwithstanding any other provisions of the contract or the source of funding, the Contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 2000, and before October 1, 2001, which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.

(d) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:

(1) Federal Travel Regulations (FTR) for travel within the 48 states;

(2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

(3) Standardized Regulations (SR) for travel allowances in foreign areas.

(e) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to Contractor travel.

(f) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to Contractor travel.

(g) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

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

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

(b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed SOW, and schedule of performance for each task at level 3 or as otherwise specified by the CO. The established estimated costs, detailed SOW, and schedule of performance shall be incorporated into WADs, signed by the Contractor and issued by the CO, which are incorporated into Section J, Attachment G, "Work Authorization Directives," upon execution by the CO. If agreement cannot be reached on the scope, schedule, and estimated cost for the WADs, the CO shall issue unilateral WADs pursuant to this clause.

(c) No activities shall be authorized and no costs incurred until either the CO has issued WADs or the CO has issued direction concerning continuation of activities.

(d) Work Authorization Directives. The WADs authorizing the Contractor to proceed with performance shall be provided to the Contractor by the CO. Each WAD so issued will include as a minimum the following:

(1) Authorization number and effective date;

(2) Description of work;

(3) Applicable paragraph reference to the SOW;

(4) Estimated cost (and estimated cost for the work to be performed under this authorization if the WAD performance schedule exceeds the current contract);

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

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

(7) Date of issue;

(8) Contractor's signature;

(9) COR's signature;

(10) CO's signature

(e) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to Contractor travel.

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

(g) Modification of Work Authorization Directives. The CO may at any time and without notice issue changes to the WADs 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 CO immediately whenever the cost incurred to date plus the projected cost to complete the work on any WAD is expected to (1) exceed the estimated cost; or (2) underrun the estimated cost by ten percent of the WAD or $10,000,000, whichever is less. In this case, the Contractor shall submit a proposal for a change in the WAD in accordance with paragraphs (a) and (b) of this clause. The Contractor's right to an equitable adjustment for a modification of a WAD which involves work under an executed cost-reimbursable task order shall be governed by the provisions of contract clause entitled "Changes" located in Section I.

(h) 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 clause. The expenditure of monies by the Contractor in the performance of all authorized work shall not exceed the estimated cost specified in the WAD and shall be governed by the provisions of the clause entitled "Obligation of Funds," in Section I.

(i) In Section I entitled "Obligation of Funds;" and in Section I, entitled "Payments and Advances." The Contractor is not authorized to incur costs on any WAD which is not in compliance with the other terms and conditions of this contract.

(j) In the event there is a conflict between the requirements of this clause and Section J, Attachment E, "Laws, Regulations, and DOE Directives," as amended, the Contractor shall obtain guidance from the CO.

(k) Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this clause, 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 CO 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 paragraph (a) and (b) of this clause.

H.20 PERFORMANCE DIRECTION

(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) RESERVED

(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 or 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 shall 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;

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

(v) interfere with the Contractor's rights under the terms and conditions of the Contract.

(d) (1) The Contractor shall only accept 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 five workdays from receipt of the Performance Direction.

(2) The Contracting Officer shall 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 and 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

(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 WADs, 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 Baseline Change Control 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 WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the CO.

(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 WADs, 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 CLASSIFIED INVENTIONS

(a) The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the Contractor contracts which require security classification markings to be placed on the application.

(c) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

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 INTEGRATED COST REDUCTION PROPOSALS

The M&O Contractors managing the Laboratories, Production Plants and the Test Site within the Nuclear Weapons Complex (NWC) may assess their operations in an integrated approach and jointly identify areas where efficiencies would bring cost reductions to the overall NWC without adversely affecting the level of performance required by the individual contracts. Accordingly, NWC Contractors may jointly develop integrated cost reduction proposals (ICRPs) for hard dollar cost savings. ICRPs are encouraged on a multi-site basis to leverage higher potential savings than could occur on a site basis and is expected to encourage sites that have developed practices and processes to share with other NWC Contractors to provide net costs savings across the complex. These ICRPs are developed and submitted to a DOE Review Board for review and approval. The ICRPs will follow the process and requirements described in Section I by the clause entitled ***"Cost Reduction"*** and which is a part of this contract with the exception of the review and approval process described above. The ICRPs are to recommend a Contractor cost sharing arrangement of the net savings that in total shall not exceed 25 percent of the net savings discussed in the Cost Reduction Clause of this contract. The ICRPs are to recommend work to be performed at each participating Contractor that would utilize the government's share of the net savings at that site. The integrated nature of these ICRPs demonstrate a significant departure from business as usual by striving for cost effectiveness across multiple sites. They would be considered above and beyond routine business practices for individual sites and as such would be given additional consideration during review by DOE for approval.

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 DEAR 970.5226-3 COMMUNITY COMMITMENT (DECEMBER 2000)

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

H.28 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (DECEMBER 2000)

(a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The Contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management Contractors and affiliated Contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such Contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating Contractors in accordance with paragraph (b) of this clause.

(d) The Contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

H.29 DEAR 952.204-75 PUBLIC AFFAIRS (DECEMBER 2000)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual information material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In release of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

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 DOE to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowances 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 Appendix A to Section J.

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

(b) **Employee Transition and Continuity of Employment, Pay and Benefits.** On November 1, 2000, all incumbent non-management employees will become employees of the Contractor. DOE expects the Contractor to subsequently exercise appropriate managerial judgement regarding employee retention and job assignments. For purposes of this clause, non-management employees are defined as all employees below the incumbent Contractor's grade 16 level, as of the date of issue of the final RFP, as well as the Medical Director.

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, to include Pension Plan, Savings Plan, Health & Welfare, and paid time off and other leave programs. All represented employees will retain pay and benefits in accordance with collective bargaining agreements.

No severance pay is warranted on the date incumbent employees transition to the Contractor since the transition occurs under equivalent employment conditions. These employees will retain their severance pay benefit earned with the incumbent Contractor, plus any severance pay based on service with the Contractor, and will be paid applicable severance if subsequently involuntarily terminated (except for cause) under the terms of the Contractor's severance policy. Prorated repayment of severance pay will be required should an individual be subsequently re-employed by the Contractor under equivalent pay and benefits, based upon the length of time between separation and new hire date.

Severance Pay will not be an allowable cost under this contract for employees who are employed by or receive an offer of employment with a replacement Contractor (or another Oak Ridge facilities Contractor or subContractor participating in the Multiple Employer Defined-benefit Pension Plans) where continuity of employment with credit for prior length of service is preserved under substantially the equivalent pay and benefits.

(c) The Contractor will become the sponsoring employer for the incumbent Contractor's multiple employer defined-benefit pension plan, and will have the responsibility for administering it and maintaining its qualified status. The Contractor will assume responsibility and will appoint or retain and have sole responsibility for the trustee(s), administrator, investment manager(s), accountant, actuary and attorney(s).

(d) **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.

(e) **Continuity of Service Credit.** All incumbent non-management employees, as defined in (b) above, transitioned from the incumbent Contractor shall retain their current service credit date for benefit earnings. Incumbent employees above grade 16 hired by the Contractor on the effective date of the contract shall also retain their current service credit date for benefit earnings.

(f) **Construction Labor Agreement.** The Contractor will recognize the existing Construction Labor Agreement between the incumbent Contractor's Construction Manager subContractor, M-K Ferguson of Oak Ridge Company, and the Knoxville Building Trades Council (KBTC) for what has historically been construction work performed by employees represented by the KBTC on the Oak Ridge Reservation.

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 CO.

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

Notwithstanding the provisions of the Section H clause 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, regarding Contractor performance issues. 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:	John Fees
Position:	President
Company:	B&W Technical Services

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, Attachment F. 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 CO.

H.35 Compliance with Internet Protocol version 6 (IPv6) In Acquiring Information Technology

(a) This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that:

(1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and

(2) it has IPv6 technical support for development and implementation and fielded product management available.

(b) If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor agrees to:

(1) obtain the Contracting Officer's approval before starting work on the deliverable;

(2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008; and

(3) have IPv6 technical support for development and implementation and fielded product management available.

(c) Should the contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

H.36 RESERVED

H.37 CONSECUTIVE NUMBERING

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

H.38 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 (QA). The Quality Assurance Program shall encompass all areas of performance by the Contractor. Additionally, the Quality Assurance 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.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 and ORO's Environmental Justice Strategic Plan.

H.40 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS

(a) Consistent with the clause in Section I entitled, "Permits or Licenses," the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting pertinent activities at Y-12 NSC. The Contractor is responsible for complying with all permits,

licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this contract (hereinafter referred to collectively as 'permits'). Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subContractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subContractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

(b) The Contractor must submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

(c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subContractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.

(d) 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. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(e) 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, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

H.41 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

(a) The Contractor shall accept, in its own name, services of notices of violations or alleged violations

(b) (NOVs/NOAVs) issued by Federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The

allowability of the costs associated with fines and penalties shall be subject to the other provisions of this Contract.

(c) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties; however, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without receiving written concurrence from the CO or his/her authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

(d) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

H.42 NUCLEAR FACILITY OPERATIONS

(a) The activities under this Contract include 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. Operations within the Nuclear Facility will be conducted in accordance with DOE approved authorization agreements.

H.43 SPECIAL ASSESSMENT OF CONTRACTOR PERFORMANCE

(a) The Department will conduct a Special Assessment of the Contractor's overall performance against established performance standards following completion of the first 23 months of the Contract term. 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 under the contract during the period November 1, 2000 through September 30, 2002 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 and commitments in the Implementation Plan provided by the Contractor as part of its Contract proposal. 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@ in Section I. 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 considered as well as the quality of the Contractor's continued performance and other considerations required by FAR in determining whether the option(s) to extend contract performance contained within this Contract should be exercised.

(d) Notwithstanding the language stated above in this clause, the Government retains all of its rights under the clause in Section I entitled "Termination."

H.44 INTEGRATED ACCOUNTING

Integrated accounting procedures are required for use under this contract. The Contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the clause in Section I entitled ***"Laws, Regulations, and DOE Directives."***

H.45 FINANCIAL MANAGEMENT SYSTEM

The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

H.46 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

(a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The Contractor is not liable to the Government for increased costs or interest resulting from its subContractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the Contractor includes in each covered subcontract a clause making the subContractor liable to the Government for increased costs or interest resulting from the subContractor's failure

to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subContractor.

H.47 WORK FOR OTHERS FUNDING AUTHORIZATION

Any uncollectible receivables resulting from the Contractor utilizing Contractor corporate funding for reimbursable work shall be the responsibility of the Contractor, and the United States Government shall have no liability to the Contractor for the Contractor's uncollected receivables. The Contractor is permitted to provide advance payment utilizing Contractor corporate funds for reimbursable work to be performed by the Contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The Contractor is also permitted to provide advance payment utilizing Contractor corporate funds to continue reimbursable work to be performed by the Contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The Contractor's utilization of Contractor corporate funds does not relieve the Contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

H.48 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

(a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as the "parties" for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

(b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(c) Regardless of which party to this contract is named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitations, the clause in Section I entitled, "Preexisting Conditions."

H.49 HAZARDOUS MATERIALS

In implementation of the clause in Section I entitled ***"Hazardous Material Identification and Material Safety Data"*** the Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. After contract award the offeror shall submit the information required by Paragraph (b) of the Section I clause referenced above. The MSDS shall conform to the requirements of 29 CFR 1910.1200 (g). MSDS shall be readily accessible during each work shift to employees when they are in their work areas.

H.50 OAK RIDGE OPERATIONS (ORO) SERVICES

ORO is responsible for multiple, broad-based programs which are managed by multiple prime Contractors. In order to provide a net benefit to the Government, the Contractor may elect to provide services to and/or obtain services from other DOE prime Contractors in the performance of their respective responsibilities. The Government may also direct the Contractor to obtain or provide services to or from other DOE prime Contractors when it is in the best interest of the Government, including the accomplishment of DOE responsibilities in which the capabilities of more than one Contractor are required. When services are obtained under this provision, the Contractor shall maintain accountability and control of the work and shall execute agreements for the conduct of work with other prime Contractors, as appropriate. No fee will be reimbursed by DOE for services obtained from or provided to other DOE prime Contractors unless approved by the Contracting officer.

H.51 RESERVED

H.52 LISTS AND ATTACHMENTS

With respect to Clause I.85, DEAR 970.5204-2 Laws, Regulations, and DOE Directives, any reference to "List B" will refer to "Section J Attachment E" of this contract.

H.53 DEFINITION OF CONTRACTOR IN FAR CLAUSE 52.250-1 (OCT 2000)

(a) the term "Contractor" except as used in paragraphs (a) and (e) of clause 52.250-1 means

(1) B&W Y-12, and

(2) B&W Y-12's member companies: B&W Technical Services, and Bechtel National Inc., including the ultimate parent companies and the affiliates of each, and

(3) employees, officers, and directors of 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 Y-12, 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 Y-12, under this contract;

(b) the term "Contractor" as used in paragraphs (a), and (e), of FAR clause 52.250-1 means B&W Y-12, ;

(c) the term "Contractor's business" as used in this clause means the management and operation of the Y-12 NSC at Oak Ridge, Tennessee, 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 Y-12 NSC located at Oak Ridge, Tennessee;

(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 Y-12, (B&W Technical Services, Bechtel National, Inc. and the parent companies of each including the ultimate parent company of each) as well as companies, other than B&W Y-12, that directly or indirectly, are owned or otherwise controlled by the member companies of B&W Y-12.

H.54 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2001)

The Contractor agrees that none of the funds obligated on this award shall be made 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.55 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2001)

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

H.56 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

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

H.57 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H.58 ADVANCE UNDERSTANDING REGARDING SPECIAL HAZARDS ASSOCIATED WITH SUPPORT OF NUCLEAR AND OTHER THREATS OUTSIDE THE UNITED STATES

The parties recognize that the Contractor's support of DOE and/or other federal agency efforts to reduce threats from nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology located outside the United States may prove hazardous to Contractor employees who volunteer for these assignments.

When performing this work, Contractor employees may be subject to special hazards which are not part of the employee's normal duties and for which workers' compensation laws, other statutes, the Contractor's welfare plan and policies, other Contractor-provided insurance, or the worker’s private insurance may not provide adequate financial protection to the worker in the event of disability, or to the worker's estate in the event of death.

(a) Definitions

(1) "Field Deployment Team" means that emergency response team established by the Contractor at the request of DOE to be available, upon call by public authorities, through DOE, for immediate technical assistance and advice outside the United States involving detection, identification, assessment, characterization, packaging, control, containment, transport, dismantlement, movement or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices, or missile technology.

(2) "Covered Assignment" means work which requires the active deployment outside the United States of a Contractor employee as a member of the Field Deployment Roster.

(3) "Special Insurance Coverage" means Special (Additional) Travel Accident or similar special insurance coverage obtained by the Contractor, with the consent of DOE, to cover each Contractor employee member of the Field Deployment Roster for accidental death, dismemberment, and disability occurring directly or indirectly from said employee's participation in a Covered Assignment, including but not limited to travel to and from the Covered Assignment.

(4) "Field Deployment Roster" means the list provided at the time of deployment by the Contractor of employees who have volunteered to serve on, and have been accepted for a Covered Assignment.

(5) “Contractor Benefit Plans Insurance" means insurance obtained and paid for by the Contractor for and on behalf of its employees. Such insurance includes Basic Life Insurance, Business Travel Accident Insurance, and, if applicable, the Special Insurance Coverage.

(b) Special Insurance Coverage

The Contractor may provide Field Deployment Roster employees with Special Insurance Coverage, as an allowable cost under this Contract, in order to facilitate the provision of technical expertise to assist in the activities listed in (a)(1) above. The total amount of Contractor Benefit Plans Insurance (including Special Insurance Coverage under this clause) provided to any Field Deployment Roster employee shall not exceed that

employee's annual salary multiplied by 10.

(c) In performing the work covered by this clause, the Contractor shall use only Contractor employees who volunteer for this work assignment. The Contractor will thoroughly explain the risks of this work assignment to potential Contractor employee volunteers prior to accepting these volunteers for this work.

(d) The Contractor will provide the Field Deployment Roster to the Contracting Officer in writing prior to beginning work that may be covered by this clause.

(e) The Contractor shall not include the provisions of this clause in its subcontracts without first consulting with and receiving advance written approval from the Contracting Officer.

(f) Special Incentives, Allowances and Payments

(1) Post Hardship Differential is authorized for Field Deployment Team members serving on such covered assignments in accordance with Department of State Standardized Regulations (DSSR), Chapter 500. Post Hardship Differential is paid to Field Deployment Team members on temporary detail to one or more hardship posts after the forty-second calendar day of the Covered Assignment. Field Deployment Team members, who serve in Afghanistan, Iraq, or other countries if approved by the Contracting Officer, shall be granted Post Hardship Differential at the prescribed rate beginning on the forty-third day back to day one.

(2) Danger Pay Allowance is authorized for Field Deployment Team members serving on such covered assignments in accordance with DSSR, Chapter 650. Danger Pay Allowance is in addition to Post Hardship Differential, except as provided in the DSSR. Employees on detail at a danger pay post may be granted the danger pay allowance at the prescribed rate for all days of detail at such post except for days of absence from the post in a post or area not designated for the danger pay allowance. Note: Danger Pay is paid only for hours for which basic compensation is paid.

(3) Post Hardship Differential and Danger Pay Allowances are limited to a maximum of seventy-two days per individual, per deployment, unless the Contracting Officer authorizes an extension of these benefits on a case-by-case basis due to critical mission needs.

(4) Field Deployment Team members will not be eligible for additional incentive payments, such as an Incentivized Performance Award (IPA), Significant Event Award (SEA) or Supplemental Performance Award (SPA), for their participation or activities in a Covered Assignment for which special payments or incentives under this clause were paid.

(5) Pursuant to work being pursued with support of nuclear and other threats outside the United States, an exception to Section E. Overtime Pay Program of Appendix A-Personnel Costs and Related Expenses is hereby granted to permit the payment of overtime to exempt employees. The payment will be made at the Field Deployment Team member's straight-time rate for all working hours over forty in a workweek in a Covered Assignment up to a maximum of seventy-two working days. The Contracting Officer may authorize an extension of overtime benefits.

H.59 ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The offeror's subcontracting plan shall include assurances that the offeror will (1) submit the Individual Subcontracting Reports and Summary Subcontracting Reports under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports at all tiers, in eSRS.

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

H.60 STRATEGIC INITIATIVES

(a) The Contractor shall participate with NNSA and other NNSA M&O contractors as part of an "enterprise organization" to evaluate, plan, develop and implement strategic initiative activities that optimize mission, laboratory, and business operations across the Nuclear Weapons Complex. The goal of these initiatives is to increase the efficiency and cost effectiveness of the NWC from a business and mission perspective.

(b) Strategic business and management initiatives should result in reduced operational costs complex-wide, more consistent work practices and operational processes, better pricing, better products, more timely delivery, reduced administrative costs and lead times for both the contractor and the NNSA, greater standardization and interchangeability across the NWC, and increased awards to small business entities.

(c) Strategic mission initiatives should result in timely fulfillment of mission goals such as weapon design, development and production.

(d) The Contractor shall cooperate with NNSA and NWC facilities in identifying potential cross-NWC benefits to be derived from implementing common practices and goals across the NWC in the following areas:

(1) Mission Workload Support

(i) Nuclear Weapons

(ii) Nuclear Non-Proliferation

(iii) Emergency Operations

(iv) Infrastructure and Environments

(v) National Security

(2) Enterprise Functional Support

(i) Enterprise Finance Operations

(ii) Enterprise Property Operations

(iii) Enterprise Human Resource Operations

(iv) Enterprise Procurement Operations

(v) Enterprise information technology

(vi) Other business/management processes common to all or groups of NWC facilities

(e) The Contractor shall support these and other initiatives that result in a shift to Enterprise-Led Organizations with the lead assigned based on the contractor who possesses the most expertise and experience level within the complex.

(f) The Contractor and NNSA will negotiate annual multi-site performance objectives with measurable performance outcomes of their involvement in strategic initiative efforts that would result in operational efficiencies and reduce cost overall for the Government.

H.61 WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (APRIL 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

All other terms and conditions remain unchanged.

End of Modification

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Section I. Contract Clauses

I.1 FAR 52.202-1 DEFINITIONS (JULY 2004)

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

“Senior Procurement Executive” means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

I.2 FAR 52.203-3 GRATUITIES (APR 1984)

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

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

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

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

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

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

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

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

I.3 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

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

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

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

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

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

I.4 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

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

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

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

I.5 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) Definitions.

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

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual. "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

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

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

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

"Subcontractor," as used in this clause,

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

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

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

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

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

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

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

(4) The CO may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or

(i) direct that the Prime Contractor withhold from sums owed the subcontractor under the prime contract the amount of the kickback. The CO may order that monies withheld under subdivision (c)(4)

(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the CO when the monies are withheld.

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

I.6 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

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

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

(2) Rescind the contract with respect to which--

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

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

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

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

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

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

I.7 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

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

the Federal Acquisition Regulation.

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

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

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

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

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

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

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

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

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

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

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

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

I.8 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

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

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

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

(1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(3) A special Government employee, as defined in section 202, title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

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

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

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

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

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

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

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable

compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

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

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

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

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

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

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

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

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

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

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of–

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

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical

services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

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

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

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

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

(c) Disclosure

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

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which

there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

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

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

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

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

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

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

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

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

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

I.9 FAR 52.204-4 PRINTED or COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

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

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item,

including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

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

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

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

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

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

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

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

I.10 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of $25,000 with a Contractor that

is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

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

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

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

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

I.11 FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)

(a) Definitions. As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"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.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

I.12 FAR 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

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

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

I.13 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)

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

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

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

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

I.14 FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA -- MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable --

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If --

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include --

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

I.15 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within _____ [insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed (months) (years).

I.16 FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZone SMALL BUSINESS CONCERNS (OCT 2004)

(a) Definition. “HUBZone small business concern,” as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

o Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business

manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

I.17 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

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

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

(c) Definitions. As used in this contract—

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

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

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

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

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

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

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—

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

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

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

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

"Veteran-owned small business concern" means a small business concern—

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

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

"Women-owned small business concern" means a small business concern—

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

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

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

I.18 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)

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

(b) Definitions. As used in this clause—

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

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

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

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

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

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

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

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

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

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

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

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

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

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

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

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

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

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

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

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

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

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

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

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

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

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

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the

purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

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

(1) The master plan has been approved;

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

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

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

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

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

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

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

(j) The Contractor shall submit the following reports:

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

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

Alternate I (Oct 2001). When contracting by sealed bidding rather than by negotiation, substitute

the following paragraph (c) for paragraph (c) of the basic clause:

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

Alternate II (Oct 2001). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

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

I.19 FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999)

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

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

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

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

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

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

I.20 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM DISADVANTAGED STATUS AND REPORTING (OCT 1999)

(a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners and teaming arrangement members through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) Reporting requirement. If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

I.21 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice,

including all relevant information, to the Contracting Officer.

I.22 FAR 52.222-3 CONVICT LABOR (JUN 2003)

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

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

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

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

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

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

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

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

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

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

I.23 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION (SEP 2000)

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

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will

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

(d) Payrolls and basic records.

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

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

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

I.24 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

I.25 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment

areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

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

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

I.26 FAR 52.222-26 EQUAL OPPORTUNITY (APR 2002)

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

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

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

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

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

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

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

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

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

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

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

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

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

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and

conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

Alternate I (Feb 1999). As prescribed in 22.810(e), add the following as a preamble to the clause:

Notice: The following terms of this clause are waived for this contract: _____ [*Contracting Officer shall list terms*].

I.27 FAR 52.222-29 NOTIFICATION OF VISA DENIAL (DEC 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

I.28 FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (DEC 2001)

(a) Definitions. As used in this clause—

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

"Executive and top management" means any employee—

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

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the

performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

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

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

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

"Special disabled veteran" means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

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

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

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

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

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

(b) General.

(1) The Contractor shall not discriminate against the individual because the individual is a

special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

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

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

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

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

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

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

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

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

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

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

(c) Listing openings.

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

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

employment.

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

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

(e) Postings.

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

(2) The employment notices shall—

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

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

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

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

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

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

Alternate I (Dec 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

I.29 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) **General**.

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

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

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

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

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

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

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

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

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

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

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

(b) **Postings**.

(1) The Contractor agrees to post employment notices stating --

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by

the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

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

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

(d) **Subcontracts**. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.30 FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (DEC 2001)

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

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

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

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

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)."

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

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

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this

clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

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

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

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

I.31 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material Identification No.

(If none, insert "None")

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.32 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

(a) Definitions. As used in this clause—

"Priority chemical" means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

"Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.

"Hazardous Chemical" means any hazardous chemical as defined under 29 CFR §1910.1200(c) except for those categories listed in 40 CFR §370.2.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning notification requirements of Section 302 of EPCRA.

(2) The extremely hazardous substances emergency release notification requirements of Section 304 of EPCRA;

(3) The Material Safety Data Sheet (MSDS) or list of MSDS for hazardous chemicals as required by Section 311 of EPCRA;

(4) The hazardous chemical inventory Tier II forms required by Section 312 of EPCRA;

(5) The toxic chemical release inventory Form Rs and Form As of Section 313 of EPCRA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

Alternate I (Aug 2003). As prescribed in 23.1005(b), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in Section 401 of E.O. 13148.

Alternate II (Aug 2003). As prescribed in 23.1005(c), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in Section 402 of E.O. 13148.

I.33 FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

I.34 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Unless otherwise exempt, the Contractor, as owner or operator of the facility used in the performance of this contract, shall provide to NNSA by July 1 for the prior calendar year the annual Toxic Chemical Release Inventory Form Rs or Form As as described in sections 313(a) and (g). The Contractor shall generate reports with the applicable Form Rs and Form As throughout the life of the contract.

(b) A Contractor-owned or –operated facility used in the performance of this contract is exempt from the toxic chemical release inventory reporting if -

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

(i) Submit Toxic Chemical Release Inventory report, including Form Rs or Form As as applicable, on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Toxic Chemical Release Inventory report for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor

shall—

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

I.35 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.36 FAR 52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies-

(i) The systems of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other

identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.37 FAR 52.225-1 BUY AMERICAN ACT - SUPPLIES (JUN 2003)

(a) Definitions. As used in this clause—

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means—

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

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

"Domestic end product" means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

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

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

I.38 FAR 52.225-8 DUTY-FREE ENTRY (FEB 2000)

(a) Definition. "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the--

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if--

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the--

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES GOVERNMENT, _____ [agency], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to--

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words ``UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the--

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if--

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

I.39 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.epls.arnet.gov/News.html. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/ofac. (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I.40 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

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

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c) (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

I.41 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 2002)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

I.42 DEAR 970.5227-6 PATENT INDEMNITY - SUBCONTRACTS. (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.43 FAR 52.227-10 FILING OF PATENT APPLICATIONS -- CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

I.44 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages (NONE), it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data -- General" clause contained in this

contract) in and to the technical data contained in the proposal dated May 5, 2000 upon which this contract is based.

I.45 FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR Part 9904 or a CAS rule or regulation in 48 CFR Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

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

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

I.46 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments

(i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards -- Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards -- Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards -- Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards -- Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards -- Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards -- Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and

Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards -- Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards -- Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5 --

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

(2) Include the substance of this clause in all negotiated subcontracts[; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award. [ ]

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

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.47 FAR 52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.48 FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

I.49 FAR 52.233-1 DISPUTES (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be

subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.50 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

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

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

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

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.51 FAR 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors

and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

I.52 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

I.53 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.54 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor

shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.55 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I.56 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

(a) Definition."Proposal," as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

I.57 FAR 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.58 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

I.59 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DEC 2004)

(a) Definitions. As used in this clause—

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.60 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be: "Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No DE-AC05-00OR22800. This may be confirmed by contacting: Contracting Officer

I.61 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

(a) Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]: _____

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

I.62 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 2003)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph

(e)(4).

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) This contract is—

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

Alternate I (Apr 2003). As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting

Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

Alternate II (Apr 2003). As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (*Note*: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

I.63 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 there under.

(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—

General Services Administration
SUPV TRANSPT SPEC
Room 300 Crystal Plaza 4
Bldg 2200 Crystal Drive
Arlington, VA

(End of clause)

I.64 FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause,

except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor—

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

Alternate I (Sept 1996). If the contract is for construction, substitute the following paragraph (h)(4) for paragraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate II (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

Alternate III (Sept 1996). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph (h)(4) shall be substituted for paragraph (h)(4) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate IV (Sept 1996). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

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

Alternate V (Sept 1996). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting

Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

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

I.65 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.66 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.67 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

I.68 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 DEAR clause with an authorized deviation is indicated by the addition of "(Deviation)" after the name of the regulation.

I.69 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the

content of the required form.

I.70 DEAR 952.204-2 SECURITY (MAY 2002)

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is

required.

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownersip, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (j), in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to

FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.71 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the DOE's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the DOE to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/ declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the DOE to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.72 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)

(a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the

Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its policies or without adversely effecting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

I.73 RESERVED

I.74 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.75 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) ALTERNATE I (JUN 1997)

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

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

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of five (5) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete SOW or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such SOW or specifications. The Contractor shall not

incorporate its products or services in such SOW or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

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

(2) Access to and use of information.

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

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

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

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

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

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

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

(c) Disclosure after award.

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

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may

terminate this contract for default.

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

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

(1) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for technical consulting and management services.

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

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

(f) Subcontracts.

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms “contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain

the approval of the DOE contracting officer prior to entering into the subcontract.

I.76 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.77 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.78 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

I.79 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition

"Eligible employee" means a current or former employee of a Contractor or subcontractor employed at a DOE Defense Nuclear Facility

(1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),

(2) who has also met the eligibility criteria contained in the DOE guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and

(3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with DOE guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.80 DEAR 970.5227-12 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (AUG 2002) ALTERNATE 1 (AUG 2002)

(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 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 DOE 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 may grant to the Contractor an advance class waiver of Government rights in any or all 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. 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, and DOE 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 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 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 at Attachment I, to this contract. DOE 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 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 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 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, and DOE 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 employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE 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 employee.

(10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(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 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 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, 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 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 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.

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

(2) Failure to disclose or elect to retain title. Title vests in DOE and DOE 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, 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 may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; 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'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 may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) Termination of advance class waiver. DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, 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 may grant or refuse to grant such a request by the Contractor. If DOE 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 shall approve any transfer of the Contractor's license in a subject invention, and DOE 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 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 licensing regulations. DOE 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 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 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 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 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 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 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. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. 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. 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 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.

(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 and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; 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, 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. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, 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 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 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 may, in accordance with the procedures in the DOE 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 has the right to grant such a license itself if DOE determines that-

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

(2) Such action is necessary to alleviate health or safety needs 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's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE 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 in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, 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 Weapon Production Facility 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, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE 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, 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 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 policy.

(t) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(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 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 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.

I.81 RESERVED

I.82 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.

I.83 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)

(a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

I.84 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.85 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.86 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

(a) For the purposes of this clause

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

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

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such

subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.87 DEAR 970.5204-11 CHANGES (APR 1984) (970-5243-1 (DEC 2000)

(a) **Changes and adjustment of fee**. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) **Work to continue**. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.88 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)

(a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of Contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

(d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

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I.104 RESERVED

I.105 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

(a) The personnel listed in Section J, Attachment D of this contract 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 under the clause at 48 CFR 970.5203-3, Contractor's Organization, 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.

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I.107 RESERVED

I.108 RESERVED

I.109 RESERVED

I.110 RESERVED

I.111 RESERVED

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I.116 RESERVED

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I.123 RESERVED

I.124 FAR 52.250-1 INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)) (ALTERNATE 1) (MODIFIED)

(a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C. § 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same right and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this cause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance.

The Government's obligations under this clause are

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Obligations of Funds clause.

(j) The term "a risk defined in this contract as unusually hazardous or nuclear" as used in this clause means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014, notwithstanding the fact that the claim or suit may not arise under Section 170 of said Act) arising from actions or inactions in the course of the following work performed by the Contractor under this contract:

(1) Activities on behalf of the Department of Energy involving weapons usable material in a nonproliferation effort on behalf of the United States, outside the United States, as described in (i) through (iv):

(i) The Department of Energy's transparency monitoring activities in Russia under the U.S.-Russian Agreement Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons dated January 18, 1993; and any extension or modification thereof;

(ii) Inspection, packaging, transportation, and storage of weapons usable nuclear material located in the Former Soviet Union, including Russia, provided that the work has been directed by the Deputy Secretary; Senior Advisor to the Secretary for Nonproliferation & Director of Arms Control & Nonproliferation; or Director, Nonproliferation and National Security.

(iii) Participation in the Department of Energy's nuclear materials protection and accountability programs in Russia, Ukraine, Kazakhstan, and Belarus, including developing such systems and consulting and training individuals, or international inspectors on such systems under the-

Agreement between the Department of Energy of the United States of America and the Federal Nuclear and Radiation Safety Authority of the Russian Federation to Cooperate on National Protection, Control, and Accounting of Nuclear Materials dated 2 October 1999.

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan concerning Control, Accounting, and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation dated 13 December 1993;

Agreement between the Department of Defense of the United States of America and the Ukrainian State Committee on Nuclear and Radiation Safety concerning Development of State Systems of Control, Accounting, and Physical Protection of Nuclear Materials to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine dated 18 December 1993;

Agreement between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus concerning Control, Accounting, and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation dated 23 June 1995;

Joint Statement by the Secretary of Department of Energy of the United States of America and the Minister of the Russian Federation for Atomic Energy on Control, Accounting, and Physical Protection of Nuclear Materials dated 30 January 1996;

Joint Statement by the Secretary of Department of Energy of the United States of America and the Minister of the Russian Federation for Atomic Energy on Protection, Control, Accounting of Nuclear Materials dated 30 June 1995;

(iv) Agreement between the United States of America and the Government of the Russian Federation on the Exchange of Technical Information in the Field of Nuclear Warhead Safety and Security dated 16 December 1994. This Agreement referred to as WSSX is the Agreement under which DOE/NN-42's Russian Lab-to-Lab Warhead Dismantlement Transparency Program is proceeding; and other work as directed by the Department of Energy, if the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy specifically approves making the indemnity provided by this clause applicable to such work.

(2) Other United States-sponsored activities outside the United States, as requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security and provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto, involving:

(i) Transparency monitoring activities;

(ii) Inspection, packaging, transportation, and storage of weapons-usable nuclear material;

(iii) Nuclear materials protection, control and accountability programs known as the Material Protection Control and Accounting Systems;

(iv) Other nonproliferation work relating to weapons-useable nuclear material.

(3) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary, or the Under Secretary for Nuclear Security, non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive

materials, facilities and/or devices; provided that the activity relates to materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.

I.125 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.126 through I.129 RESERVED for future use.

NOTE: The following Federal Acquisition Regulation Clauses 52.222-6 through 52.222-16 apply only to construction work performed under the contract.

I.130 FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

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

this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.131 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.132 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

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

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the–

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I.133 FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

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

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to

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

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

I.134 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

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

I.135 FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

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

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

subcontract.

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

I.136 FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

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

I.137 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

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

I.138 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

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

I.139 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I.140 FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

I.141 DEAR 970.5217-1 WORK FOR OTHERS PROGRAM (NON-DOE FUNDED WORK) (JAN 2005)

(a) Authority to Perform Work for Others. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor's Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of Participation in Work for Others Program. The Contractor:

(1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,

(9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:

(i) Sponsoring agency;

(ii) Total estimated costs;

(iii) Project title and description;

(iv) Project point of contact; and,

(v) Estimated start and completion dates.

(d) Negotiation and Execution of Work for Others Agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.

(2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of Project Proposals. When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) Work for Others Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Work for Others Report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Work for Others Activities under the contract.

I.142 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 970.5204-3, 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 I 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 and maintain 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 test 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 (I), 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.

I.143 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000)

(a) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

(b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting

officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted,

(i) Any claim which the Government may have against the contractor in connection with this contract, and

(ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(g) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

(j) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.3270(a)(1)(i), if a separate fixed-fee is provided for a separate item of work, paragraph (a) of the basic clause should be modified to permit payment of the entire fixed-fee upon completion of that item.

Alternate II (DEC 2000). As prescribed in 48 CFR 970.3270(a)(1)(ii), when total available fee provisions are used, replace paragraph (a) of the basic clause with the following paragraph (a):

(a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.

Alternate III (DEC 2000). As prescribed in 48 CFR 970.3270(a)(1)(iii), the following paragraph (k) shall be included in management and operating contracts with integrated accounting w and approval of costs incurred. The contractor shall prepare and submit ansystems:

(k) Revienually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Alternate IV (DEC 2000). As prescribed in 48 CFR 970.3270(a)(1)(iv), the following paragraph (k) shall be included in management and operating contracts without integrated accounting systems:

(k) Certification and penalties. The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

I.144 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is $6,836,791,618.42. Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of

those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices-Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the-- day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only-- days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.3270(a)(3)(i), paragraph (d) of the clause may be omitted in contracts which, expressly or otherwise, provide a contractual basis for equivalent controls in a separate clause.

I.145 DEAR 970.5208-1 PRINTING (DEC 2000)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

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

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.146 DEAR 970.5203-1 MANAGEMENT CONTROLS. (DEC 2000) (DEVIATION)

(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; 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 are 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.

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

I.147 DEAR 970.5245-1 PROPERTY (DEC 2000)

(a) *Furnishing of Government property*. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property*. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) *Identification*. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

(d) *Disposition*. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all

government property which had come into the possession or custody of the contractor under this contract.

(e) *Protection of government property-management of high-risk property and classified materials*.

(1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.

(2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:

(1) Shall immediately inform the contracting officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management. (1) Property Management System. (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the contractor's business; or

(2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The contractor shall include this clause in all cost reimbursable subcontracts.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.4501-1(b), when the award is to a nonprofit contractor, replace paragraph (j) of the basic clause with the following paragraph (j):

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent

representatives who have supervision or direction of all or substantially all of:

(1) The contractor's business; or

(2) The contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The contractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract). November 21, 2002

I.148 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000)

(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 970.4402-3 and 48 CFR 970.3102-3-21(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 subcontracts 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 52.225-3 and 48 CFR 52.225-5. 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) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost

basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.

(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 48 CFR 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 part 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 in 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.149 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of

advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.150 DEAR 970.5228-1 INSURANCE-LITIGATION AND CLAIMS (MAR 2002)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c) (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."[67 FR 14871, Mar. 28, 2002]

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's- [67 FR 14871, Mar. 28, 2002]

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a

non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j) (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1. [67 FR 14871, Mar. 28, 2002]

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I.151 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.152 DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

(a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.

(b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.

(d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean

"Contractor Recycling Coordinator."

I.153 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) - ALTERNATE II (DEC 2000)

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 Weapon Production Facility, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Weapon Production Facility 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 Weapon Production Facility; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Weapon Production Facility 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 Weapon Production Facility or weapon production user facilities. 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.

(b) Definitions.

(1) Contractor's Weapon Production Facility Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Weapon Production Facility.

(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 Weapon Production Facility, and one or more parties including at least one non-Federal party under which the Government, through its Weapon Production Facility, 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 Weapon Production Facility; 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 Weapon Production Facility Director 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 Weapon Production Facility Intellectual Property, subject to the Government's retained rights.

(6) Weapon Production Facility 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 Weapon Production Facility employees or through the use of Weapon Production Facility research facilities.

(7) Weapon Production Facility 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 Weapon Production Facility employees or through the use of Weapon Production Facility research facilities.

(8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Weapon Production Facility Biological Materials or Weapon Production Facility 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 Weapon Production Facility 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 other persons participating in Weapon Production Facility 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 the 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 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-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 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 Weapon Production Facility 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 DOE prior to evaluating a proposal by a third party or DOE, 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 Weapon Production Facility and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness.

(1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, 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 Weapon Production Facility intellectual property where the Weapon Production Facility obtains rights during the course of the Contractor's operation of the Weapon Production Facility 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 Weapon Production Facility, consistent with the research and development mission and objectives of the Weapon Production Facility 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 Weapon Production Facility's 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 Weapon Production Facility 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 Weapon Production Facility, 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 establish subject to the approval of the contracting officer a 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.

(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 Weapon Production Facility 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 Weapon Production Facility, 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 DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE 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 DOE 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 DOE 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 DOE 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 DOE and in such a format which will serve to adequately inform DOE 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's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Weapon Production Facility 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. Weapon Production Facility 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 approved Joint Work Statement (JWS), the Weapon Production Facility Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(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 Weapon Production Facility Director 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. If a modification is required, the contracting officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The contracting officer shall provide a written explanation to the Contractor's Weapon Production Facility Director 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 Weapon Production Facility Director 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

(iv) 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 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 facilities for use by DOE 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 not CRADAs and will be 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.

(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 DOE 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 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 Weapon Production Facility, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor’s Weapon Production Facility staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Weapon Production Facility or facility, 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 Weapon Production Facility 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, 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. (End of clause)

I.154 DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000)

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the

determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives - Facility Management Contracts" if contained in the contract. [68 FR 68771, Dec. 10, 2003]

(d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; 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 evaluation period.

(e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); 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, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, 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.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(1), when the award fee cycle consists of two or more evaluation periods, add the following to paragraph (c):

(4) At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

Alternate II (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(2), when the award fee cycle consists of one evaluation period, add the following to paragraph (c):

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(3), when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment, add the following as paragraph (f):

(f) Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the

contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

Alternate IV (DEC 2000). As prescribed in 48 CFR 970.1504-5(a)(4), when the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option, add the following text as paragraph (f):

(f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I.155 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)

(a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.156 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection

Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites. [65 FR 80994, Dec. 22, 2000]

I.157 DEAR 970.5237-2 FACILITIES MANAGEMENT (DEC 2000)

(a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) of this clause. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

(d) Subcontract Requirements. To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

I.158 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.159 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Insert date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.3170 (a), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

Alternate II (DEC 2000). As prescribed in 48 CFR 970.3170 (b), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed

by the contracting officer and as required elsewhere in this contract.

I.160 DEAR 970.5215-2 MAKE-OR-BUY PLAN (DEC 2000)

(a) Definitions.

Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) Make-or-buy plan. The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.

(c) Submission and approval. For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make

or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) Conduct of operations. Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.

(e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

I.161 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to

(1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and

(2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,00

I.162 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the

Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

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

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

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

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

I.163 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of 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 the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]

(1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its

designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the contracting officer);

(2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.164 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

(a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

I.165 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix--. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through

(1) the Contractor's work force,

(2) educational outreach,

(3) community involvement and outreach,

(4) subcontracting,

(5) economic development (including technology transfer), and

(6) the prevention of profiling based on race or national origin.

I.166 DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000)

(a) Definitions.

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

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

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

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

(b) Allocation of Rights.

(1) The Government shall have:

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

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, 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 (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) 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, 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 therefor.

(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.------- with the Department of Energy. For (period approved by DOE 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 DOE Patent Counsel.

(f) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a

subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 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.

(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.

(g) 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.------- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

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

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

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

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

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

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

Restricted Rights Notice-Long Form

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

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

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

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

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the

Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(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.--- with (name of Contractor).

(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."

(i) 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.

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

I.167 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS UPON FINDING OF SUBSTANTIAL EVIDENCE OF FRAUD (DEC 2000)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

I.168 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES (JAN 2004)

(a) General.

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

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

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

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

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

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

(b) Reduction Amount.

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

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

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include

performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

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

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

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

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the contracting officer’s satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

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

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

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a

subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

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

(v) At the end of the contract:

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

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

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

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

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

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

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

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

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

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

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

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.

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

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

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

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

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

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

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

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

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

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

Alternate I [JAN 2004]. As prescribed in 48 CFR 970.1504-5(c)(2), replace paragraphs (a), (b)(1), (b)(2), and (b)(3) of the basic clause with the following paragraphs (a), (b)(1), (b)(2), and (b)(3) and delete paragraph (d).

(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS).

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

(3) If the contractor does not meet the performance requirements of this contract relating to ES&H during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, ``Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount.

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

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

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of

mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include the following.

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

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

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

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

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status, or ISO 14000 Certification).

(vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

Alternate II [JAN 2004]. As prescribed in 48 CFR 970.1504-5(c)(3), insert the following as paragraphs (e) and (f) in contracts awarded on a cost-plus-award fee, incentive fee or multiple fee basis (if Alternate I is also used, redesignate the following as paragraphs (d) and (e)).

(e) Minimum requirements for specified level of performance.

(1) At a minimum the contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

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

(2) The evaluation of the Contractor's achievement of the level of performance shall be

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

(f) Minimum requirements for cost performance.

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

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

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

I.169 DEAR 970.5215-4 COST REDUCTION (DEC 2000)

(a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) Definitions.

Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc.,

required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or

(2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) Procedure for submission of CRPs.

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

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

(ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

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

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

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

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

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

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

(e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

(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 any impairment of essential functions.

(f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.

(j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

I.170 DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY (APR 2008)

(a) The Contractor shall follow the provisions of Defense Priorities and Allocation System (DPAS) regulation (15 CFR Part 700) in obtaining materials (including equipment, services, or facilities needed to fill this contract.

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J. Attachments

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ATTACHMENT A – PERSONNEL COSTS AND RELATED EXPENSES

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Attachment A – Personnel Costs and Related Expenses

I. INTRODUCTION

This Personnel Attachment sets forth those Contractor Human Resources 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 Contractor work. Only those items of personnel costs and related expenses that are set forth herein or specifically referenced in this Attachment A 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 National Nuclear Security Administration (NNSA) Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request that this Personnel Attachment 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 Attachment A 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 Attachment 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 Attachment to the Contracting Officer.

II. DEFINITIONS

Adjustment: A change in salary required to establish either internal or external equity.

Adjusted Rate, Adjusted Pay, or Adjusted Base Pay is the rate of pay per hour, per week, or per month, including any premium pay.

Average Rate: The rate which is determined by dividing the weekly straight-time pay by the number of hours worked during the payroll week when an employee works at more than one basic rate or more than one shift differential rate during a payroll week.

Basic Earnings: The amount obtained by multiplying the number of hours worked by the basic rate.

Basic Rate, Job Rate, or Basic Salary: Rate of pay per hour, per week, or per month, exclusive of any premium, but including any cost of living allowances (COLAs) established in any bargaining unit agreements established for each job classification in accordance with the approved wage and salary schedules.

Basic Workweek: A 40-hour workweek.

Contractor: Refers to Babcock & Wilcox Technical Services Y-12, LLC (B&W Y-12)

DOE/NNSA: The contracting officer or authorized representative of the contracting officer.

Demotion: The permanent placement of an employee in a lower-rated job classification.

Employee: A person hired by and working for the Contractor.

Exempt Employees: Executive, administrative, and professional employees who are exempt from certain provisions of the Fair Labor Standards Act (FLSA). They are on the monthly payroll.

Immediate Family: Immediate family members include husband, wife, son, daughter, mother, step-mother, father, step-father, mother-in-law, father-in-law, sister, brother, half brother, half sister, brother-in-law, sister-in-law, grandmother, grandfather, grandmother-in-law, grandfather-in-law, grandchildren, step-children, son-in-law, and daughter-in-law.

Merit Increase: An increase in the salary of an employee within the established rate range of the job classification, which is granted consistent with the salary plan.

Nonexempt Employees: Employees who are covered under and are subject to the provisions of the FLSA. They are on the weekly salaried or hourly payroll.

Overtime Pay: Payment (in addition to straight time) for any hours worked in excess of 8 hours in an 8 hour work day or 10 hours in a 10 hour work day in a 24 hour period or 40 hours within a payroll week for hourly and nonexempt salaried employees (or as otherwise agreed in advance and based on a 40 hour payroll week) and when applicable, payment for required hours worked in excess of 45 hours within a payroll week for eligible exempt salaried employees.

Payroll Day: The 24-hour period extending from midnight to midnight. Exception: Payroll day may vary from midnight to the established starting or ending time of the shift.

Payroll Week: Seven consecutive days (168 hours) extending from midnight Sunday to midnight Sunday. Exception: Payroll week may vary from midnight to the established starting or ending time of the shift.

Premium Pay: A payment in addition to straight time pay made for any reason other than overtime; for example, shift differential, weekend premium, etc.

Promotion: The permanent placement of an employee in a higher rated job classification due to an increase in the character or scope of his/her job assignment.

Reevaluation: is a change of job level, up or down, through evaluation of an existing job.

Reclassification: The placement of an employee in a new classification due to reassignment without change in salary range.

Regular employee: Any full-time or part-time employee on the Contractor's payroll, not in a temporary status.

Regular Rate: The straight-time rate at which the hours are worked or the average rate for the week, whichever is greater.

Regularly Scheduled Shift: The normal hours of working time in each payroll day established for each employee by the Division Manager- Human Resources.

Straight-time Pay or Straight-time Earnings: Amount obtained by multiplying the number of units of time worked by the straight-time rate per unit of time.

Straight-time Rate: The rate of pay per hour, per week, or per month obtained by adding the applicable shift differential rate to the basic rate for the job classification assigned at the time the work is performed.

Termination: Quit, discharge, layoff, retirement, death, and/or removal from the payroll because of disability (as distinguished from disability absence where the employee is not removed from the payroll).

III. 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 Y-12 National Security Complex (NSC). The programs will apply to exempt and nonexempt/non-bargaining (NENB) employees 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 Attachment A.

B. Bargaining Unit Employee Compensation

1. The terms and conditions set forth in collective bargaining agreements (CBAs) and modifications thereto and established practices thereunder between the Contractor and recognized bargaining agents for its employees assigned to work under this contract (which involve expenditure of funds) constitute the allowable costs for bargaining unit members' compensation and benefits for reimbursement by DOE/NNSA. The collective bargaining agreements, incorporated by reference, include those with the following bargaining agents:

   a) Atomic Trades and Labor Council AFL-CIO and its Affiliated Unions, including Local 480 of the IAM

   b) United Steel Workers (USW), Local # 9-288

   c) Knoxville Building and Construction Trades Council (KBCTC)

2. Prior to the negotiation of a new and/or revised CBA, the Contractor will review its negotiation plan with DOE/NNSA and obtain DOE/NNSA approval of its cost parameters and/or subsequent changes thereto. Reasonable costs which arise from administration of or pursuant to CBAs shall constitute allowable costs. The specific approval of DOE/NNSA shall be obtained in the case of unusual items.

The Contractor will provide to DOE/NNSA copies of its CBAs as they are entered into or modified and will keep DOE/NNSA informed as far in advance as practicable of significant labor developments, which are potentially precedent setting, may involve high cost, or potential work stoppages.

C. Exempt and NENB Compensation Programs

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 worthy 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 the 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/NNSA approval prior to changing any major compensation system component.

3. Obtain DOE/NNSA 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. (commonly called recovery).

   d) Specific employee groups (e.g., exempt, NENB) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the DOE/NNSA.

   e) DOE/NNSA 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.

4. Unexpended portions of the CIP for one salary year are not carried into the succeeding salary year.

5. Submit an annual expenditure report, DOE F3220.8, to include breakouts for merit, promotion, adjustments, lump sums, and structure movement for each payroll showing actual against planned amounts.

D. Approval of Individual Compensation Actions

The Contractor will submit annually proposed individual salary actions for Key Personnel identified in Section J, attachment D of this contract, and employees who's salary is equal to or greater than the Secretary of Energy for approval by DOE/NNSA. These actions shall be submitted to DOE/NNSA on a Compensation Approval Form, DOE F 3220.5 at least thirty (30) days in advance of the proposed effective date of the action. DOE/NNSA shall exert its best efforts to process the approval determination within the thirty (30) day period; in the event the approval determination is not provided within thirty (30) days, subsequent approval may be made retroactive to the effective date proposed by the Contractor.

Obtain DOE/NNSA approval for any proposed salary amount paid an employee in excess of the range prior to payment.

E. Overtime Pay Program

The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract. The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage (exempt and nonexempt base pay) of payroll may exceed, or is likely to exceed, four percent. In such circumstances the Contractor will submit to NNSA an overtime plan forecasting the overtime necessary to meet known work requirements. This report will be provided to NNSA within 30 days after the beginning of the fiscal year. Overtime will be managed to provide for the safe and cost-effective utilization of human resources and efficient conduct of business. Performance will be reported to the NNSA on an annual basis, approximately 30 days after the end of the calendar year.

1. Exempt Overtime:

   a) Employees at or below Salary Grade 5 are eligible for straight time pay for hours worked in excess of 45 in a payroll week.

   b) All exempt employees except Division Managers/Directors are eligible to earn compensatory time off at the rate of one hour earned for two hours worked. Individual compensatory time may not exceed 80 hours annually.

   c) Casual overtime will not be paid.

2. Supervisory employees may receive additional compensation when required to work extensive additional hours, which result in serious inequities with other employees in the same work group.

3. Extended work week - Under extenuating circumstances, where exempt employees are required to work greater than 50 hours/week on a continuing basis for at least two months to meet critical goals and milestones, the Contractor may pay for additional hours above 40 hours/week at the straight time rate for those additional hours. The request requires the approval of both the affected Division Manager/Director and the Human Resources Manager.

4. Nonexempt Nonbargaining Overtime:

   a) Except as provided in subparagraphs b) and c) below, a NENB employee shall be paid, if applicable, for all hours worked in excess of 40 hours in one basic work week. Additionally NENB employees will be paid at the rate of one and one-half (1½) of the employee's base pay and shift differential for work in excess of eight (8) in any twenty-four (24) hour period for employees whose work week consist of five (5) eight (8) hour days and in excess of ten (10) in any twenty-four hour period for employees whose work week consists of four (4) ten (10) hour days.

   b) Each employee participating in a workweek consisting of five (5) eight (8) hour days may 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.

   c) Each employee participating in a workweek consisting of four (4) ten (10) hour days may receive time and one-half of the employee's first and second day of rest, and double time for all hours worked on the employee's third day of rest.

   d) Hours actually worked shall be considered as hours of work for computing overtime pay.

   e) 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).

   f) If an employee on the 5/8 shift is required to work eleven (11) or more continuous hours (counting the regular lunch period) he/she shall be granted a meal allowance and thirty (30) minutes to eat on Company time. Employees on the 4/10 shift are required to work 12 or more hours. 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.

   g) 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, or four (4) hours straight time pay, whichever is greater.

   h) Shift Premium: A shift premium is paid to NENB employees scheduled to work on rotating shift schedule or a fixed shift schedule will receive a shift premium as follows:

      (i). Employees assigned to the 4 p. m. to 12-midnite shift or any variation of

this shift may be paid up to sixty cents ($.60) per hour for hours worked.

(ii). Employees assigned to the 12-midnite to 8 a. m. shift or any variation of this shift may be paid up to one dollar and twenty cents ($1.20) per hour for hours worked.

(iii). Shift employees working overtime will receive overtime pay computed on their rates plus the shift premium, if any, in effect during their regularly scheduled shift.

i) Call In Allowance: A NENB employee who properly reports to work and is sent home because of lack of work shall receive a minimum of four (4) hours pay at his or her regular hourly rate, unless he or she has been previously notified not to report to work.

j) Change in Work Schedule: A NENB employee whose schedule is changed with less than forty-eight (48) hours notice prior to the first hour of the new schedule will receive one and one-half (11/2) times his or her regular rate for the first eight (8) hours on a 5 day 8 hour schedule or for the first ten (10) hours on a 4 day 10 hour schedule.

k) Saturday and Sunday Work: A NENB employee who works on Saturday and/or Sunday as part of the regular schedule may receive an additional fifty cents ($.50) per hour for such work on Saturday and an additional one dollar ($1.00) per hour for such work on Sunday, unless such work is part of an extended work week. These payments may not be included in earnings when calculating the employee's participation in the various benefit plans.

F. Shift Differential Pay Program

Exempt salaried employees assigned to shift work will receive shift differential as follows:

1. Employees assigned to the standard rotating shift schedule may receive up to $130 a month.
2. Employees assigned to the 4 p.m. to 12-midnight shift or any variation of this shift may be paid up to $120 per month.
3. Employees assigned to the 12 midnight to 8 a.m. shift or any variation of this shift, may be paid up to $220 a month.
4. Employees assigned to a rotating shift other than the standard rotating shift will be paid a combination of the appropriate differentials based on the percent of time worked on each shift.
5. Employees assigned to an irregular shift may be paid the differential for the shift on which more than 50 percent of the hours were worked. If time is equal, the highest rate may be used.

G. Compensation for Certifications

Non-bargaining employees may be paid for certifications and/or qualifications with DOE/NNSA approval.

H. Saturday and Sunday Work:

An exempt salaried employee who works on Saturday and/or Sunday as part of the regular schedule may receive an additional fifty cents ($.50) per hour for such work on Saturday and an additional one dollar ($1.00) per hour for such work on Sunday, unless such work is part of an extended work week. These payments may not be included in earnings when calculating the employee's participation in the various benefit plans.

IV. BENEFITS PROGRAM

A. Policy/Objectives

1. The Contractor will design and administer benefit programs to attract, retain, and motivate a world-class, high-tech and diverse workforce with skills and competencies aligned with the Y-12 mission. The program shall be:

   a) Competitive with the external labor markets and market based

   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 Attachment 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.

B. Exempt and Nonexempt/Non-bargaining Benefits Program

The Contractor shall submit a benefit value study consistent with the requirements in DOE Order 350.1with the exception that benefit value studies will be due every two (2) years as opposed to three (3).

If the benefits value result is 5 percent or below the comparator for other organizations, no further action is required. If the Contractor benefit value result is greater than 5 percent above the comparator for other organizations, the Contractor shall submit to the Contracting Officer a corrective action plan to achieve conformance with the range of acceptability defined above, unless otherwise justified in writing. The plan shall include specific benefit plan changes and a timetable for implementation and shall be approved by the Contracting Officer.

1. Group Insurance

   The Contractor will be reimbursed for all cost incurred in implementing, administering, and funding comprehensive group insurance plans. Initial implementation or substantial changes to these plans require DOE/NNSA approval. The features of these plans are set forth in policies and summary plan descriptions, a current copy of which

will be provided to DOE/NNSA. These plans will be administered consistently in accordance with Plan Documents, insurance contracts, applicable laws and fiduciary responsibilities.

2. Benefits Program for Displaced Workers

   a) The cost of medical plan coverage for Contractor employees who have separated from employment, excluding those terminated "for cause," will be reimbursable from the date of separation provided the employee was:

      (i). On the employment rolls and voluntary or involuntary separation on or after September 27, 1991, as a result of the implementation of a work force restructuring plan requested by the Secretary of Energy; and,

      (ii). Eligible for medical insurance coverage under the Contractor's plan at the time of separation; and,

      (iii). Not eligible for coverage under an employer's group health plan or Medicare since the time of separation.

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J. Attachments

Attachment A – Personnel Costs and Related Expenses

Plan	Current Contractor Cost
Group Life Insurance	Active employees, retirees Under 65 50% of full cost for basic life
Medical Expense including Prescription Drug and Vision Plans	Active employees 80% of full cost. Under 65 retirees with greater than ten years of service 75% full cost
Major Medical Medicare Supplement Plan	Over 65 retirees (with greater than ten years of full service time) 50% of full cost
Dental Expense Assistance Plan	Active employees 80% of full cost. Under 65 retirees with greater than ten years of service 75% full cost.
Travel Insurance	100% covered
Special Accident Insurance Plan	Fully paid by the employee
Long Term Disability Plan	Contractor provides up to 60% of pay, maximum $5,000 per month which is offset by other income benefits, for hourly employees. Contractor provides 30% of pay, and the employee can purchase an additional 30% of pay for a 60% total benefit. Whether the benefit is 30% or 60%, the maximum monthly benefit amount is $5,000 and is reduced by other income benefits on the 30% amount the Contractor provides and the 30% the employee purchases.
Medical and Dependent Care Flexible Spending Accounts	Administrative Cost only
Spouse/Child Life	Administrative Cost only
Supplemental Life	Administrative Cost only
Long term care	Administrative Cost only

Table 1. Benefit Plans

*This table will be revised to reflect approved benefit plan changes when determined.

b) Retirees eligible for medical coverage under the Contractor's health plan will not be eligible for coverage under Section 3161 of the National Defense Authorization Act of 1993.

c) Benefits for displaced workers contained in Workforce Restructuring Plan, developed pursuant to the National Defense Authorization Act of 1993, are reimbursable to the extent that a specific description of each benefit with supporting information and detailed projected costs has been reviewed and approved in advance by DOE/NNSA, for inclusion in the Plan.

3. Defined Benefit Pension Plan

   a) If the contract terminates or expires and there is a replacement Contractor, all assets and liabilities shall transfer to the replacement Contractor, and the Contractor shall be relieved of, and indemnified by DOE/NNSA, against any and all liabilities arising from such plans.

   b) If the contract terminates or expires and there is no replacement Contractor, the plan shall be terminated in accordance with the provisions of ERISA and the Internal Revenue Code (IRC). Annuity purchase bids will be solicited from a minimum of five of the ten largest insurance companies whose AM Best rating is A+ and who are currently quoting pension plan termination annuities. After all obligations for all liabilities (as defined in IRC 1.414(1)) of these defined benefit plans have been fully funded, as well as any related tax liability of the corporation, any remaining assets shall be returned to the DOE/NNSA. If the assets are insufficient to cover pension obligations, DOE/NNSA shall provide additional funding to cover such obligations.

   c) If the plan terminates before the contract terminates the definition and disposition of assets and liabilities shall be as specified in paragraph (2).

   d) Under the scenarios described in paragraphs (1), (2), and (3), the Contractor shall actively manage all assets until the date of settlement. Such management shall include protection of principal if appropriate.

4. Pension and Savings Plans

   a) The Contractor will be reimbursed for all costs incurred in implementing, administering, and funding the above plans. Initial implementations or substantial changes to these plans require DOE/NNSA approval. The features of the Pension and Savings Plans are set forth in plan descriptions, current copies of which will be provided to DOE/NNSA. These plans will be administered consistently and in accordance with applicable laws, Internal Revenue Service code, Plan Documents, and fiduciary responsibilities.

   The Contractor will periodically review the Plans to assure that the plan design meets Contractor objectives to provide income replacement value consistent with industry standards, and to assure the overall benefit package is reasonable and competitive from a total compensation perspective.

   The Contractor cost of these plans is included in the table below:

Plan	Contractor Cost
Pension Plan	100% Contractor paid
Savings Plan	100% match up to first 2% of pay 50% match up to next 4% of pay

Table 2. Pension/Savings Plans Cost Breakdown

b) Reports

The Contractor will submit copies of actuarial valuation reports (prepared by the Contractor's actuarial consultants), a copy of IRS Form 5500 with schedules as submitted to IRS, and other financial or accounting reports developed or required in connection with the DOE/NNSA reimbursed Pension and Retirement Plans.

c) Non Qualified Pension Plans

Non-qualified Pension Plans implemented solely to replace the reductions in the Pension Plan benefit due to limitations imposed by Sections 415 and 401(a) 17 of the Internal Revenue Code are reimbursable under this contract. These plans will provide employees with benefits provided under the formulae expressed in the Contractor's Pension plan and does not provide any additional benefit absent the Internal Revenue Code limitations. These benefits will be funded on a pay-as-you-go basis.

d) Contract Termination/Expiration

The Contractor shall not terminate any benefit plan without DOE/NNSA approval. All costs for claims arising from defined benefit plans and post-retirement life, medical and other benefit liabilities for active and retired employees are obligations of the government. It is the intention of DOE/NNSA not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the contract. At the termination or expiration of this contract, the Contractor's obligations to employees and retirees for these plans shall be relieved and indemnified by the government as described below:

(i). Post Retirement Life and Medical, and Other Benefit Obligations

If the contract terminates and there is a replacement Contractor, all assets and liabilities shall transfer to the replacement Contractor, and the Contractor shall be relieved of, and indemnified by DOE/NNSA, against any and all further liabilities arising from such plans.

If the contract terminates and there is no replacement Contractor, DOE/NNSA will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this contract related to Contracting Officer-approved employee welfare benefit plans (including but not limited to medical, life, and workers' compensation). If so requested by DOE/NNSA at the time of contract termination or expiration, where there is no replacement Contractor, the Contractor will, with Contracting Officer Approval, (which will not be unreasonably denied) either (i) continue as the sponsor of these plans until all liabilities of such plans are discharged, or (ii) purchase annuities to guarantee the accrued liabilities of the plans which will be discharged by a third party insurance company.

(ii). Taxes and IRS Penalties

If Contractor action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the Contractor shall pay it from corporate funds. If DOE/NNSA action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the Contractor shall pay it from DOE/NNSA funds.

5. Defined Contribution Savings Plan

   Upon contract termination, individual employee accounts in the defined contribution plan shall be handled in accordance with the provisions of ERISA. Any unallocated funds (e.g., suspense accounts) shall be returned to the DOE/NNSA.

6. Holidays

   a) Each exempt and NENB employee may, when the work schedule permits, be granted time off for holidays as follows:

      (i). Each employee participating in a workweek consisting of five (5) eight (8) hour days will be granted time off pay with pay for the following eleven (11) holidays per calendar year and paid at the rate of eight (8) hours pay at his/her straight time base pay rate, if applicable.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Thanksgiving Associated	Good Friday
Memorial Day	Christmas Day
Christmas Associated	Independence Day
Companion to Independence Day (or other day determined by Contractor)	

Table 3. 5 Day 8 Hour Week Holidays

      (ii). Each employee participating in a workweek consisting of four (4) ten (10) hour days will be granted time off with pay for the following nine (9) holidays per calendar year and paid at the rate of ten (10) hours pay at his/her straight time base pay rate for eight (8) of the holidays and eight (8) hours for the ninth (9) holiday.

Holiday	4/10 "A" Shift (Mon. - Thurs.)	4/10 "B" Shift (Tues. - Fri.)
New Year's Day	Yes	Yes
Martin Luther King, Jr. Day	Yes	Yes
Good Friday	SDO	Yes
Memorial Day	Yes	SDO
Independence Day	Yes	Yes
Companion to Independence Day (or other day determined by Contractor)	Yes	Yes
Labor Day	Yes	SDO
Thanksgiving Day	Yes	Yes
Thanksgiving Day Associated	SDO	Yes
Christmas Day	Yes	Yes
Christmas Eve	Yes	Yes

Table 4. 4 Day 10 Hour Week Holidays

b) A NENB employee required to work on one of the designated holidays, shall receive holiday pay at the rate of 2.5 times the employee's adjusted rate for nonexempt employees. For exempt employees below salary grade 5 the pay is 2 times the employee's adjusted rate. Exempt salaried employees salary grade 5 and above are not eligible for a holiday pay premium.

c) An exempt employee above salary grade 5 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.

7. Vacation

a) Exempt and NENB employees shall earn, on a prorated basis, and may take vacation in accordance with the following schedule:

(i). Employees with 15 years company service on 1/1/96

Completed Years of Service	Vested Annual Vacation
6 Months to 1Year	40 Hours
1 through 4	80 Hours
5 through 9	120 Hours
10 through 19	160 Hours
20 through 29	200 Hours
30+	240 Hours

Table 5. Vacation for 15 years company service

(ii). Employees with less than 15 years company service on 1/1/1996

Completed Years of Service	Vested Annual Vacation
6 Months	40 Hours
1 through 4	80 Hours
5 through 9	120 Hours
10 through 19	160 Hours
20+	200 Hours

Table 6. Vacation for < 15 years company service

(iii). New Hires on or after 1/1/96

Completed Years of Service	Annual Vacation Accrual
6 Months	40 Hours
1 through 4	80 Hours
5 through 9	120 Hours
10 through 19	160 Hours
20+	200 Hours

Table 7. Vacation for new hires after 1/1/1996

b) Exempt and NENB employees may take annual vacation leave in one-hour increments.

c) 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.

d) 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.

e) An hourly employee who is deprived of a vacation at the end of the year due to a short-term disability, through management action, or because of unusual working conditions may receive payment for such vacation in addition to regular pay. A

salaried employee similarly deprived of a vacation will receive equivalent time off in the following year unless the Contractor authorizes payment for the vacation.

f) An employee may be paid for unused vacation at the time of termination.

8. Personal Leave

a) The following employees are eligible for paid Personal Leave:

(i). Exempt employees

(ii). NENB employees

b) 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. Paid personal leave for each eligible employee shall not exceed forty (40) hours per payroll year Employees may report and be charged for personal leave in increments of one hour. Exempt employees who are allowed time off for personal reasons in increments of less than a whole workday and have already used forty (40) hours of personal leave in that payroll year shall be required to use accrued vacation leave or Monthly Balancing Time 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 forty (40) hours of personal time will be considered time off without pay.

c) At the discretion of the Division Manager, Human Resources, an eligible employee may be granted personal leave in excess of forty (40) 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 Division Manager, Human Resources.

9. Bereavement Leave

In the event of the death of a member of the employee's immediate family, a salaried employee may be granted leave with pay for up to 32 hours.

10. Jury Duty and Service as a Witness

An exempt or NENB employee may be allowed up to forty (40) hours per week paid time off (unless otherwise required by the courts) for the time required to (i) serve on a jury or jury panel and (ii) serve 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.

11. Military Service, Training, and Emergency Duty

Military service, training and emergency duty policies are administrated in accordance with applicable laws, Contractor policies, and procedures. An employee will be granted a leave and protection against loss of pay for required military training and emergency duty. Such payments are limited to a maximum of 2 weeks per year or ten workdays {5 day, workweek participants} or up to 8 workdays {4 day, workweek

participants} or 4 weeks every 2 years for training and one month per year for emergency duty at the employee's adjusted rate. Make-up pay may be granted for required active duty military service.

An employee also may be paid for absences from work when required to register or take a physical examination required for entry into the armed forces.

12. Decision Making Leave

    Time off with pay for a decision making leave under the Contractor's discipline program is Allowable, not to exceed twenty four (24) hours. Additional time off with pay must be approved by the Contracting Officer.

13. Part Time and Ad Hoc Employment

    Part-time and Ad-Hoc employees may be hired at the salary ranges consistent with internal and external market pricing for comparable jobs.

    The provisions of this Paragraph shall apply to employees hired as part-time and/or employees transferring from full-time to part-time status who apply and receive approval for part-time employment status. Part-time status is defined as working between 20% and 80% of a regular schedule as evaluated on a semi-annual basis. Part-time employees will be compensated on a pro-rated basis of hours worked in relation to their normal base rate and a 40-hour workweek.

    a) Part-time non-exempt employees will be paid straight time for all hours worked up to 40 in a week, no matter how many hours are worked in any one day.

    b) All part-time employees are considered nonexempt for overtime purposes consistent with the Fair Labor Standards Act regardless of job classification.

    c) Holiday pay for part-time employees may be pro-rated (e.g., if a part-time employee works 24 hours a week, holiday pay would be at 60% pay).

    d) Part-time employees shall be eligible to participate in the Compensation Increase Plan.

    e) Part-time employees are eligible for coverage under certain company benefit plans, policies and procedures.

Benefit	**20 Hours/Week** X = Full Participation	**21 To 39 Hours/Week** X = Full Participation
Jury Duty		Pro-Rated
Lay-off Allowance		Pro-rated
Temporary Military Duty		Pro-Rated
Bereavement		Pro-Rated
Paid Absence		Pro-Rated
Vacation		Pro-Rated
Holiday Pay		Pro-Rated
Group Insurance	X	X
Educational Assistance		X
Savings Plan	X	X
Retirement	X	X
Rewards, Recognition, and Suggestion Program	X	X
Voting Time	X	X

Table 8. Schedule of Benefits for Y-12 Salaried Part-Time Employees

Part-time employees not working a regular scheduled workweek shall be compensated at an hourly rate established at the time of hire or transfer from full-time status. The amount and frequency of pay increases shall be at the discretion of management in accordance with the Compensation Increase Plan.

14. Leave of Absence Without Pay

An employee may be granted a leave of absence without pay, for a period of twelve (12) months with an option of extending the leave of absence by the Contractor provided the absence will not interfere with the Contractor's operations or create any conflict of interest. Continuation of benefits during leave of absence without pay will be administered according to the Contractor's leave of absence policy.

15. Severance Pay

The following severance pay provisions will apply to exempt and NENB employees:

a) Pay Schedule

An exempt or NENB employee laid off due to (1) reduction in force, (2) job elimination, (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 awards as follows:

Service Credit	Severance Pay
3 months but under 1 year	$^{1}/_{12}$ of ½ month's pay for each completed month of company service credit
1 year and under 3 years	½ month's pay
3 years and under 5 years	¾ month's pay
5 years and under 7 years	1 month's pay
7 years and under 10 years	1½ month's pay
10 years	2 month's pay
11 years or more	Same for 10 years, plus ¼ month for each additional year of service

Table 9. NENB Severance Pay

Salaried employees will also be eligible for severance pay in the event a salaried employee is terminated because of his/her inability, as deemed by the Contractor, to perform the essential functions of his/her job.

b) Separation Pay Pursuant to Voluntary Separation Payment Plan (VSPP) Programs

Employees who request to separate from employment pursuant to a VSPP Program and whose separation is approved by the Contractor are eligible to receive no less than seventy (70) percent and no more than one hundred (100) percent of the amount an employee would have received under the Contractor's severance plan, as set forth in Section J, Attachment A, Table 9. Approval for Contractor implementation of VSPP Programs must be granted by DOE.

c) Pay in Lieu of Notice

(i). 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.

(ii). 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.

(iii). In providing pay in lieu notice, the provisions of the Worker's Adjustment Retraining Notification (WARN) Act will be considered, as appropriate.

If the Contractor reemploys an employee after having been paid a severance payment, Company Service Credit for any subsequent severance payment consideration shall start from the date of such reemployment. If any individuals are re-employed by the Contractor prior

to the end of the period covered by the severance pay (e.g., received 20 weeks severance pay, but re-employed after 15 weeks), the difference must be refunded.

No severance pay is paid to employees who terminate their employment voluntarily, who are discharged, or who resign by Contractor request.

16. Participation in Civic Affairs

The Contractor my 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 (total of a), b), and c) below) by all Contractor employees shall not exceed two thousand eighty (2,080) hours in any calendar year for the total contract.

a) Civic Leave

Employees holding elected Federal, State, or local government office may be permitted to utilize a reasonable period of working time with pay to carry out responsibilities which are required by the office and cannot be handled outside working hours.

b) Civic Defense/Emergency Preparedness Exercises

Employees who have volunteered and have been accepted by a local Civil Defense Organization to participate in community or national defense alert operations or in Civil Defense/Emergency Preparedness training may be excused from work for such participation without loss of pay for scheduled hours of work.

c) Election Officials

An employee who has been officially appointed to serve as an election officer, judge, or clerk may be excused from work without loss of pay for the period of time necessary to serve in such capacity.

17. Work Apparel

Employees who are required or allowed to wear special clothing, shoes and protective equipment for various reasons such as safety, housekeeping, protection from harmful chemicals or radioactive contamination, guard exercise clothing, etc., are furnished such items at no cost to the employees. Cost of providing and laundering of such special clothing are allowable costs. Safety glasses or goggles and safety shoes other than those furnished by the Contractor (one pair of which may be sold to any employee once every two years at $8 less than cost per pair in an attempt to prevent off-the-job lost time accidents) are also allowable costs.

18. Voting Time

Employees may be excused from work without loss of pay for the minimum time needed, not to exceed two (2) hours to vote in a national, state, county, or municipal election consistent with state laws.

19. Short Term Disability Insurance

a) Short Term Disability Pay

Parent company transfers company recognized date will be used to determine STD pay eligibility. Under the Contractor's absence control program, a system to assure appropriate administrative actions are taken in a timely manner based upon medical evidence is implemented to assure reasonable sick leave usage and management of the Disability Allowance Program for both non-occupational and occupational disabilities. The schedule of maximum salary continuation for short-term disabilities is as follows:

Short Term Disability			
New Employee with less than 6 months at Y-12	New to Y-12 from Parent Company with less than 6 months at Y-12 & less than 10 years at Parent Co.	Employee with more than 6 months at Y-12	Parent company employee with more than 6 months at Y-12
1 month STD accrued for every month worked at Y-12, not to exceed 6 months. If no STD is accrued none is available. Request for vacation loan can be made from other employees.	1 month STD accrued for every month worked at Y-12, not to exceed 6 months. STD does not transfer over from parent company or project office. If no STD is accrued none is available. Request for vacation loan can be made from other employees.	100% of salary for up to 6 months.	100% of salary for up to 6 months.

Table 10. Short-Term Disability Schedule of Maximum Salary Continuation

Company Service Time	Duration of Salary
One month but less than two months	One month
Two months but less than three months	Two months
Three months but less than four months	Three months
Four months but less than five months	Four months
Five months but less than six months	Five months
Six or more months	Six months

Table 11. Schedule of Maximum Salary Continuation for Short-Term Disabilities

Salary continuation for short-term disabilities will be on a per disability basis. Ordinarily, salary payments during short-term disabilities will be made at the employee's adjusted rate. Any "loss-of-earnings" payments received, such as Workmen's Compensation Benefits in cases of occupational disability, will offset the continued payments of salary.

b) Death Benefits

In case of death of a salaried employee, salary payments may be continued until the end of the month following the month in which death occurs.

20. Adjusted Service Credit

a) M&O Conractors can recognize Parent Company service for their employees transferring to an NNSA M&O Contractor site *without* prior DOE/NNSA service, for the purpose of determining eligibility for the following benefits.

(i). Eligibility for Vesting and Vacation

(ii). Eligibility to participate in 401K Plan

(iii). Pension Plan Vesting

(iv). Entitlement to early retirement benefits and early commencement of deferred vested benefits under the pension plan

(v). Service Awards

(vi). Retiree Medical Benefits as defined per Table 12.

b) M&O Contractors can recognize Parent Company service for employees transferring to an M&O Contractor that have worked for the Parent Company at other DOE/NNSA sites under a facility management contract, for the purpose of determining eligibility for severance pay provided the employee did not receive severance pay at the other DOE/NNSA sites.

c) M&O Contractors can also recognize Parent Company service for their employees transferring to an M&O Contractor for Parent Company service accrued under a DOE/NNSA facility management contract, for the purpose of determining eligibility for retiree medical benefits provided the employee had at least ten years continuous service at the new DOE/NNSA site and other DOE/NNSA sites immediately prior to retirement.

d) The following table (Table 12) summarizes the information for ease of use:

Section J. Attachments

Attachment A – Personnel Costs and Related Expenses

Benefit	Parent Company Employee Transferring to NNSA M&O Site ***Without*** Prior DOE Service	Parent Company Employee Transferring to NNSA M&O Site ***With*** Prior DOE Service
Eligibility and Vesting for Vacations	YES	YES
Eligibility to participate in 401K	YES	YES
Eligibility to participare (vesting) in pension plan	YES	YES
Computing pension benefit in Defined Benefit pension plan	NO	NO
Vesting for early retirement benefits and early commencement of deffered vested benefits under the pension plan	YES	YES
Service Awards	YES	YES
Severence Pay	NO	YES
Vesting for Retiree Medical Benefits	**YES**, Parent Company Employees who entered B&W Y-12 employment process **PRIOR TO** August 1, 2005. [1] **NO**, Parent company Employees who entered B&W Y-12 employment **AFTER** August 1, 2005. [2]	YES, if 10 years service at current DOE/NNSA site and/or and other DOE/NNSA sites immediateley prior to retirement

Table 12. Schedule of Adjusted Service Credit Recognition

[1] See Section J, Attachment A.,Paragraph B. 20. a)
[2] See Section J, Attachment A.,Paragraph B. 20. c)

e) The Contracting Officer may approve, in advance, on a case-by-case- basis, the extension of benefits to other Parent Company employees who transfer to an NNSA M&O site that have no prior DOE/NNSA service.

V. LABOR RELATIONS

A. Policy/Objectives

1. It is the objective of the B&W Y-12 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 NNSA. The following collective bargaining agreements are incorporated by reference:
   a) Atomic Trades and Labor Council AFL-CIO and its Affiliated Unions
   b) United Steel Workers (USW), Local # 9-288
   c) Knoxville Building and Construction Trades Council
3. Expenses, including contracted legal counsel expenses, related to grievance processing and settlement, arbitration and arbitration awards, NLRB matters, 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, efficient 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 NNSA and receive NNSA 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 NNSA approval.
4. Consult with 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-of-buy decisions or other matters affecting efficiency or economy of operations.

VI. MISCELLANEOUS HUMAN RESOURCES PROGRAMS

A. Policy/Objectives

The purpose of the Contractor Miscellaneous Human Resources Program is to facilitate the achievement of organizational objectives and to support the business strategies of the

Contractor and NNSA. 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 Attachment 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. 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 as 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 conferences expenses will be allowed when authorized by the Contractor.

C. Educational Assistance

1. Cooperative Educational Program

   The Contractor may provide temporary employment opportunities for students under the cooperative education and student intern programs.

2. Educational Assistance Program

   The Contractor may provide financial assistance to eligible employees who engage in educational activities in order to establish, maintain, or upgrade skill required by the Contractor. Eligible employees must satisfactorily complete courses of study to be eligible for assistance. Educational assistance may include payment for tuition, textbooks, supplies, and fees. Payment may also be made for proficiency testing, which results in the granting of academic credit or is otherwise required by the school.

   Regular work hours may be rescheduled to attend classes provided that there is no significant reduction in the employee's productive contribution caused by the

rescheduling. Reduction of work schedules, with appropriate reduction of pay, and leaves of absence may be granted to facilitate course completion where deemed beneficial to pay for work under the Contract. Employees participating in Educational Assistance Program may use facilities, equipment, and services in support of their studies if approved by management.

3. University Program Participation

   The Contractor may permit a rescheduling of regular work hours or a reduction in the work schedule and corresponding reduction in pay for Contractor employees who are engaged in teaching, planning, or general management at local colleges or universities.

4. Paid Educational Leave/Sabbatical Leave

   a) To obtain advanced degrees in fields of study, which, in the opinion of the contractor, will further the DOE/NNSA mission.

   b) Such leaves may be approved for a cumulative duration not to exceed 24 months per individual.

   c) No more than four individuals may be on paid educational/sabbatical leave at any given time.

   d) The leaves require approval by the Division Manager, Human Resources.

   e) If the employee does not return to active work after the approved leave period, the employee will be required to pay back the salary continuation and benefits costs received during the leave.

   f) If the employee voluntarily leaves the Contractor's payroll prior to working three years after returning to active work, the employee will be required to pay back the salary continuation and benefit costs on a prorated schedule based on the amount of time they have been back on the Contractor's payroll.

   g) No educational assistance, travel or relocation expenses will be paid to employees on these leaves of absence with pay.

D. Professional Fees, Dues, Licenses, and Certifications

   The costs of required licenses, fees, and similar costs to certify and maintain employee qualifications to perform work under the contract are allowable. The Contractor will closely manage and control the number of licenses/fees to limit reimbursed costs to provide a sufficient number of qualified employees to reasonably perform the affected work under the contract.

E. Employee Recognition and Memberships

   The costs of employee recognition programs and organizational and individuals memberships are allowable based on a budget formula not to exceed ¼ of 1% of base payroll on September 30 of the prior fiscal year. Program costs include the following:

   1. Company service awards for achieving service milestones consistent with the corporate service awards program.

2. Safety awards and recognition to promote health and safety.
3. Awards, recognition, and celebrations for participating in management initiatives, special achievements, retirement, and similar activities to the extent that they are reasonable and consistent with industry practice.
4. The costs of organization and employee memberships in trade, business, and technical organizations necessary for effective performance of work under the contract provided they are reasonable and do not constitute payments for, or in support of, partisan and political (lobbying) activity.
5. Additionally, an amount not to exceed $150,000 per FY will be utilized to implement a safety awareness rewards program for non-represented personnel to provide balance and to further extend the safety program.

F. Patent Awards

Cash Awards of $500 may be made to each inventor (or each co inventor) for each invention filed in the U.S. Patent and Trademark Office, which benefits the objectives of the Contractor and DOE/NNSA.

G. Personnel Temporarily Assigned to Contractor 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 employee's 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 policy which are contained elsewhere in this Attachment A. Upon request of the Contracting Officer, a report of corporate assignments to the Y-12 NSC will be provided.

H. Personnel Loaned From Contract Work

The Contractor may loan, at no cost to the government, individuals working under this contract to other operations as long as it does not interfere with the performance of contract work. Each loan arrangement will be reviewed to assure no conflict of interest and will be approved by the cognizant B&W Y-12 Contracts Manager. A cumulative report showing all employees loaned, along with the total days loaned and services provided, will be submitted to the DOE/NNSA annually.

I. Personnel Support Activities

The Contractor will be reimbursed for costs of activities incidental to the promotion of morale, welfare, health, and safety of employees, such as employee publications; health and first aid clinics; net costs of in-plant food services (operated on a break-even basis); employees time to promote employee participation in Blood Drives, U.S. Savings Bonds and United Fund campaigns; and other similar activities which may be sanctioned by the Contractor.

J. Participation in Association Activities

Cost incurred as a result of participation in the activities of technical, professional, and business methods associations will be allowed, as long as reasonable and necessary for the performance of effective work under the contract.

K. Business Expense Program

The following expenses to the extent reasonable and which contribute to the effectiveness of the Contractor's work under the contract will be allowable:

1. Booklets and pamphlets describing the capabilities of the Contractor, e.g., operational, financial, personnel, etc.
2. Cost of meetings, including cost associated with activities such as labor negotiations, recruiting, etc.

L. Employee Assistance Program (EAP)

The Contractor will provide for an Employee Assistance Program consistent with the Drug Free Workplace Act of 1988. This benefit will be administered in accordance with the contract between the Contractor and the EAP vendor. Periodic internal reviews will be conducted to assess cost/benefit of program delivery.

M. Travel and Relocation

1. The Contractor may pay transportation, lodging, meals, incidental, relocation, and other expenses for employees or other persons required to travel or move in conjunction with the performance of work under this contract. Allowable costs for travel and relocation include costs according to applicable provisions of the FAR and DEAR, the Federal Travel Regulations, and the Internal Revenue Service auto allowance. The Contractor may deviate in specific instances where it is determined to be economically advantageous to the DOE/NNSA and to the extent such deviations conform to pertinent regulations and law. The Contractor will maintain records based on its determinations to deviate in specific instances sufficient for audit review. When the Contractor requires employees to work at locations of significant distance from their regular assignment, on a temporary or permanent basis, geographic pay allowances may be appropriate. The intent is to keep employee's compensation and standards of living reasonably whole so that they suffer neither a significant financial loss nor gain because of the assignment.
2. Relocation costs are those costs incident to (1) the permanent change of duty station of an existing employee and (2) the recruitment of a new employee.
3. Costs incurred in the recruitment of personnel consistent with applicable provisions of the DEAR and FAR and Federal Travel Regulations are reimbursable.
4. Relocation Allowances & FAR/FTR Applicability Matrix applicable to new employees and transfers.

Allowance Category	**FTR Chapter 302**	**FAR 31.205-35**
House Hunting	X	
Shipment of Household Goods	X	
Shipment of Privately Owned Vehicles	X	
Temporary Change of Station	X	
Home Sale		X
Home Purchase	X	
Duplicate Housing		X
Miscellaneous Allowance		X
Mortgage Differential		X
Relocation Income Tax		X
Spousal Employment Assistance		X
Use of Relocation Service Companies -Home Sale -Home Marketing -Home Finding -Home Marketing Incentive	 X X X X X	

Table 13. Relocation Allowances & FAR/FTR Applicability Matrix

N. Key Personnel

DOE/NNSA approval must be obtained for any changes or additions to the key personnel positions listed in Section J Attachment D, consistent with the requirements detailed in clause I.105 (DEAR 952.215-70) of this contract.

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J. Attachments

ATTACHMENT C – SMALL BUSINESS SUBCONTRACTING PLAN

ATTACHMENT B – SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

The Agreement for Special Financial Institution Account required by the clause entitled "***Payments and Advances***" in Section I will be added after contract award as Attachment B.

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ATTACHMENT C – SMALL BUSINESS SUBCONTRACTING PLAN

Attached is the "Master" Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, Offer pages C-1 thru pages C-5.

ATTACHMENT C – SMALL BUSINESS SUBCONTRACTING PLAN

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ATTACHMENT D – KEY PERSONNEL

See the clause entitled "***Key Personnel***" in Section I.

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J. Attachments
Attachment D – Key Personnel

KEY PERSONNEL

President and General Manager	Darrel P. Kohlhorst
Deputy General Manager	William R. Klemm
Senior Vice President, Business Services	Scott W. Baker
Senior Vice President, Transformation and Projects	John P. Howanitz
Director, Human Resources	Donna J. Hampton
Vice President and Executive Director, Science Technology and Partnerships	Randy J. Spickard
Vice President, Safeguards & Security	Willis L. Clements
Vice President, Programs and Quality	William G. Reis
Vice President, Engineering	John H. Gertsen
Vice President, Facilities, Infrastructure & Services (Acting)	Steven K. Little
Vice President, Production	Leslie L. Reed
Vice President, Environment, Safety & Health	Michelle M. Reichert
Vice President, Y-12 Productivity	Nancy A. Johnson
Chief, Nuclear Safety Operations	Joseph G. Henry
Senior Director, Waste Operations & Integrated Facilities Disposition Program	John W. Krueger
Chief Financial Officer	Robert M. Gifford

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ATTACHMENT E – BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS
List B – List of Applicable Directives

DOE DIRECTIVES **DOE Directives can be found at the following Internet address:** **http://www.directives.doe.gov/**				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE O 110.3A	01/25/2007	CONFERENCE MANAGEMENT		
Compliance: Compliance will be in accordance with an Implementation Plan approved by DOE on 09/20/2007.				
DOE O 130.1	09/29/1995	BUDGET FORMULATION		Extended until 05/01/2003 by DOE N 251.45.
DOE O 137.1A	08/30/1999	PLAN FOR OPERATING IN THE EVENT OF A LAPSE IN APPROPRIATIONS		
DOE M 140.1-1B	03/30/2001	INTERFACE WITH THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD		
DOE O 142.1	01/13/2004	CLASSIFIED VISITS INVOLVING FOREIGN NATIONALS		Cancels portions of Chapter VIII of DOE O 470.1 pertaining to foreign nationals who visit DOE sites/facilities and require access to classified information.
DOE M 142.2-1	09/04/2008	MANUAL FOR IMPLEMENTATION OF THE VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY		

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DOE DIRECTIVES **DOE Directives can be found at the following Internet address:** **http://www.directives.doe.gov/**				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE O 142.2A	12/15/2006	VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY		
DOE O 142.3	06/18/2004	UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM	1 02/28/2008	
DOE O 142.3	06/18/2004	UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM	1 02/28/2008	
DOE O 200.1	09/30/1996	INFORMATION MANAGEMENT PROGRAM		
DOE N 203.1	10/02/2000	SOFTWARE QUALITY ASSURANCE		Extended until 12/31/2001 by DOE N 251.40.
DOE O 205.1A	12/04/2006	DEPARTMENT OF ENERGY CYBER SECURITY MANAGEMENT		
Compliance: Compliance will be in accordance with the NAP Implementation Plan. In the interim, Y-12 will continue its unclassified system accreditations under the Cyber Security Program Plan (CSPP).				
DOE M 205.1-3	04/17/2006	TELECOMMUNICATIONS SECURITY MANUAL (OFFICIAL USE ONLY)		
DOE M 205.1-4	03/08/2007	NATIONAL SECURITY SYSTEM MANUAL		
Compliance: Based on this directive, compliance will be contingent upon an impact assessment of the revised Program Cyber Security Plan (PCSP) to be developed by NNSA. Pending that impact assessment, classified information system certification and accreditation will continue to be governed by DOE M 471.2-2, "Classified Information Systems Security Manual."				
DOE M 205.1-5	08/12/2008	CYBER SECURITY PROCESS REQUIREMENTS MANUAL		
Compliance: Compliance is contingent upon an impact assessment to be based on receipt of further guidance with respect to NNSA's Program Cyber Security Plan.				

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE M 205.1-7	**01/05/2009**	**SECURITY CONTROLS FOR UNCLASSIFIED INFORMATION SYSTEMS MANUAL**		
Compliance: Compliance is contingent upon an impact assessment to be based on receipt of further guidance with respect to NNSA's Program Cyber Security Plan.				
DOE N 206.4	06/29/2007	PERSONAL IDENTITY VERIFICATION		**Extended by DOE N 251.74 until 06/09/2009 or until superseded.**
DOE O 210.2	06/12/2006	DOE CORPORATE OPERATING EXPERIENCE PROGRAM		
DOE O 221.1A	04/19/2008	REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL		
DOE O 221.2A	02/25/2008	COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL		
Compliance: Compliance with this Order is not intended to abrogate the constitutional rights of B&W Y-12's employees, subcontractors, or other support personnel.				
DOE O 221.3A	04/19/2008	ESTABLISHMENT OF MANAGEMENT DECISIONS ON OFFICE OF INSPECTOR GENERAL REPORTS		See Footnote (1)
DOE O 224.3	01/24/2005	AUDIT RESOLUTION AND FOLLOW-UP PROGRAM		See Footnote (4)
DOE O 241.1A	04/09/2001	SCIENTIFIC AND TECHNICAL INFORMATION MANAGEMENT	1 10/14/2003	
DOE M 251.1-1B	08/16/2006	DEPARTMENTAL DIRECTIVES PROGRAM MANUAL		

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE P 251.1A	08/16/2006	DEPARTMENTAL DIRECTIVES PROGRAM POLICY		
DOE O 251.1B	08/16/2006	DEPARTMENTAL DIRECTIVES PROGRAM		
DOE N 251.40	05/03/2001	EXTENSION OF DOE DIRECTIVES ON SECURITY		Extends DOE N 142.1, DOE N 203.1, DOE N 205.1, DOE N 205.2, DOE N 205.3, DOE O 470.1, DOE N 470.2, DOE O 471.2A, DOE O 472.1B, DOE M 473.2-1, DOE N 473.3, DOE N 473.4, DOE N 473.5, DOE N 473.6, and DOE N 473.7 until 12/31/2001.
DOE N 251.45	05/29/2002	EXTENSION OF DOE O 130.1 AND DOE O 135.1		Extends DOE O 130.1 and DOE O 135.1 until 05/01/2003.
DOE N 251.64	07/07/2005	EXTENSION OF DOE DIRECTIVES		Extends DOE O 471.1A, DOE M 471.1-1, Chg. 1, DOE M 472.1-1B, and DOE N 473.9 until 07/07/2006.

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE N 251.74	**11/24/2008**	**EXTENSION OF DOE N 206.4**		**Extends DOE N 206.4 until 06/29/2009 or until superseded.**
DOE O 252.1	11/19/1999	TECHNICAL STANDARDS PROGRAM		
DOE O 323.1	**08/01/2004**	**GARNISHMENT OF FEDERAL EMPLOYEES' PAY**	**1 06/04/2008**	
DOE O 350.1	09/30/1996	CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS	1 05/08/1998	
DOE O 350.2A	10/29/2003	USE OF MANAGEMENT AND OPERATING OR OTHER FACILITY MANAGEMENT CONTRACTOR EMPLOYEES FOR SERVICES TO DOE IN THE WASHINGTON, D.C., AREA		
DOE N 351.1	04/27/2006	CONTRACTOR EMPLOYEE PENSION AND MEDICAL BENEFITS POLICY		
Compliance: Implementation of this Notice has been suspended until 06/19/2007 as directed by the Secretary of Energy in a memorandum dated 06/19/2006.				
DOE O 412.1A	04/21/2005	WORK AUTHORIZATION SYSTEM		
DOE O 413.1B	**10/28/2008**	**INTERNAL CONTROL PROGRAM**		
DOE O 413.3A	07/28/2006	**PROGRAM AND PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS**	**1 11/17/2008**	This Order cancels Chapters 1 through 3 of DOE M 413.3-1.

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE M 413.3-1	03/28/2003	PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS		Chapters 1 through 3 are cancelled by DOE O 413.3A.
DOE O 430.1B	09/24/2003	REAL PROPERTY ASSET MANAGEMENT	1 02/08/2008	
DOE O 430.2B	02/27/2008	DEPARTMENTAL ENERGY, RENEWABLE ENERGY AND TRANSPORTATION MANAGEMENT		
Compliance: This Order implements parts of the total program directed at strengthening federal environmental, energy and transportation management. It combines with Executive Order 13423, "Strengthening Federal, Environmental, Energy, and Transportation Management," and DOE O 450.1, "Environmental Protection Program," to form the total program. B&W Y-12 currently is not in full compliance with the total program. Thus, compliance will be contingent upon approval of an implementation plan submitted to DOE on 02/24/2009 that addresses the total program.				
DOE P 442.1	11/16/2006	DIFFERING PROFESSIONAL OPINIONS ON TECHNICAL ISSUES RELATED TO ENVIRONMENT, SAFETY, AND HEALTH		
DOE O 442.1A	06/06/2001	DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM		
DOE O 443.1A	12/20/2007	PROTECTION OF HUMAN SUBJECTS		
DOE P 443.1A	12/20/2007	PROTECTION OF HUMAN SUBJECTS		
DOE P 450.7	08/02/2004	DEPARTMENT OF ENERGY ENVIRONMENT, SAFETY AND HEALTH (ES&H) GOALS		
DOE O 452.3	06/08/2005	MANAGEMENT OF THE DEPARTMENT OF ENERGY NUCLEAR WEAPONS COMPLEX		

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE M 452.4-1A	03/11/2004	PROTECTION OF USE CONTROL VULNERABILITIES AND DESIGNS		
DOE O 457.1	02/07/2006	NUCLEAR COUNTERTERRORISM		
DOE M 457.1-1	08/10/2006	CONTROL OF IMPROVISED NUCLEAR DEVICE INFORMATION (OFFICIAL USE ONLY)		
DOE P 470.1	05/08/2001	INTEGRATED SAFEGUARDS AND SECURITY MANAGEMENT (ISSM) POLICY		
DOE N 470.2	12/15/2000	REPORTING UNOFFICIAL FOREIGN TRAVEL		Extended until 12/31/2001 by DOE N 251.40.
DOE O 470.2B	10/31/2002	INDEPENDENT OVERSIGHT AND PERFORMANCE ASSURANCE PROGRAM		Cancels and replaces DOE O 470.2A and Attachment 2, "Safety Issue Corrective Action Process," of DOE O 414.1A, dated 09/29/1999, as amended by Change 1, dated 07/12/2001.
DOE O 470.3B	08/12/2008	GRADED SECURITY PROTECTION (GSP) POLICY		
Compliance: Compliance will be contingent upon approval of a revised implementation plan to be submitted to DOE by 09/30/2009.				

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DOE DIRECTIVES **DOE Directives can be found at the following Internet address:** **http://www.directives.doe.gov/**				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE M 470.4-1	08/26/2005	SAFEGUARDS AND SECURITY PROGRAM PLANNING AND MANAGEMENT	1 03/07/2006	
Compliance: Compliance will be in accordance with the requirements in the CRD and the approved deviations as documented in the NNSA HQ's classified Safeguards and Security Information Management System (SSIMS).				
DOE M 470.4-2	08/26/2005	PHYSICAL PROTECTION	1 03/07/2006	
Compliance: Compliance will be in accordance with the requirements in the CRD and the approved deviations as documented in the NNSA HQ's classified Safeguards and Security Information Management System (SSIMS).				
DOE M 470.4-3A	**11/05/2008**	**CONTRCTOR PROTECTIVE FORCE**		
Compliance: Compliance will be in accordance with the requirements limited to Chapter I, page I-3, paragraph 2.c, Chapter I, page I-11, paragraphs 6.a.(1) through (4); Chapter III, page III-3, paragraphs 4.a.(1) through (6); and Chapter V, page V-7, paragraph 3.b.(9)(b)1, first sentence in part as it relates to providing telephone service at fixed protective force posts; and with an approved deviation as documented in the NNSA HQ's classified Safeguards and Security Information Management System (SSIMS).				
DOE M 470.4-4	08/26/2005	INFORMATION SECURITY	1 06/29/2007	Cancels DOE M 471.2-4 except for the classified annex.
Compliance: Compliance will be in accordance with the requirements in the CRD and the approved deviations as documented in the NNSA HQ's classified Safeguards and Security Information Management System (SSIMS).				
DOE M 470.4-5	08/26/2005	PERSONNEL SECURITY		
DOE M 470.4-6	08/26/2005	NUCLEAR MATERIAL CONTROL AND ACCOUNTABILITY	1 08/14/2006	
Compliance: Compliance will be in accordance with the requirements in the CRD and the approved deviations as documented in the NNSA HQ's classified Safeguards and Security Information Management System (SSIMS).				

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE M 470.4-7	08/26/2005	SAFEGUARDS AND SECURITY PROGRAM REFERENCES		
DOE O 471.1A	06/30/2000	IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION		Extended until 07/07/2006 by DOE N 251.64.
DOE M 471.1-1	06/30/2000	IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION MANUAL	1 10/23/2001	Extended until 07/07/2006 by DOE N 251.64.
DOE M 471.2-2	08/03/1999	CLASSIFIED INFORMATION SYSTEMS SECURITY MANUAL		Chapter VI, paragraphs 4j(2) and 4j(6), and Chapter VII, paragraph 12a(2)(a) are cancelled by DOE N 205.3. Chapter III, Section 8, “Incident Reporting,” is cancelled by DOE N 205.4.
DOE M 471.2-3B	10/29/2007	SPECIAL ACCESS PROGRAM POLICIES, RESPONSIBILITIES, AND PROCEDURES (OFFICIAL USE ONLY)		
DOE M 471.2-4	02/06/2004	TECHNICAL SURVEILLANCE COUNTERMEASURES (OFFICIAL USE ONLY)		Cancelled by DOE M 470.4-4 except for the classified annex.

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE O 471.3	04/09/2003	IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION		
DOE M 471.3-1	04/09/2003	MANUAL FOR IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION		
DOE O 475.1	12/10/2004	COUNTERINTELLIGENCE PROGRAM		
DOE M 475.1-1B	08/28/2007	MANUAL FOR IDENTIFYING CLASSIFIED INFORMATION		
DOE O 475.2	08/28/2007	IDENTIFYING CLASSIFIED INFORMATION		
DOE M 481.1-1A	01/03/2001	REIMBURSABLE WORK FOR NON-FEDERAL SPONSORS PROCESS MANUAL	1 09/28/2001	
DOE O 482.1	01/12/2001	DOE FACILITIES TECHNOLOGY PARTNERING PROGRAMS		
DOE O 483.1	01/12/2001	DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS		
DOE M 483.1-1	01/12/2001	DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS MANUAL		
DOE O 484.1	08/17/2006	REIMBURSABLE WORK FOR THE DEPARTMENT OF HOMELAND SECURITY		
DOE O 522.1	11/03/2004	PRICING OF DEPARTMENTAL MATERIALS AND SERVICES		

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
Compliance: B&W Y-12 is in compliance with the applicable requirements of this document with the exception of specifically approved exemptions on pass-through costs. These exemptions are reflected in the latest approved B&W Y-12 Cost Accounting Standards Board Disclosure Statement.				
DOE O 534.1B	01/06/2003	ACCOUNTING		
Compliance: Compliance with this Order includes compliance with Chapters 5, 8, 12, 15, 17, and 21 of the "DOE Accounting Handbook," with the exception that production support costs will be handled as direct costs rather than indirect costs based on the FY 2006 Congressional Budget Funding Schedule for Directed Stockpile Work.				
DOE O 551.1C	06/24/2008	OFFICIAL FOREIGN TRAVEL		
DOE M 573.1-1	07/12/2000	MAIL SERVICES USER'S MANUAL		
DOE O 580.1	12/07/2005	DEPARTMENT OF ENERGY PERSONAL PROPERTY MANAGEMENT PROGRAM		
Compliance: Compliance will be contingent upon approval of a Deviation Request submitted to DOE on 07/31/2006 that is directed at a graded approach to implementing requirements contained in Attachment 2, Paragraphs 2.d.(1), 2.d.(3), 2.e.(1)(b)3, 2.e.(2), and 2.o(1); and an Implementation Plan submitted to DOE 08/30/2006.				
DOE 1340.1B	01/07/1993	MANAGEMENT OF PUBLIC COMMUNICATIONS AND SCIENTIFIC, TECHNICAL, AND ENGINEERING PUBLICATIONS		
DOE 1450.4	11/12/1992	CONSENSUAL LISTENING-IN TO OR RECORDING TELEPHONE/RADIO CONVERSATIONS		
DOE 2340.1C	06/08/1992	COORDINATION OF GENERAL ACCOUNTING OFFICE ACTIVITIES		See Footnote (1)
DOE 5560.1A	05/08/1985	PRIORITIES AND ALLOCATIONS PROGRAM		
DOE 5610.2	08/01/1980	CONTROL OF WEAPONS DATA	1 09/02/1986	

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
DOE 5639.8A	07/23/1993	SECURITY OF FOREIGN INTELLIGENCE INFORMATION AND SENSITIVE COMPARTMENTED INFORMATION FACILITIES		
DOE 5660.1B	05/26/1994	MANAGEMENT OF NUCLEAR MATERIALS		
DOE 5670.1A	01/15/1992	MANAGEMENT AND CONTROL OF FOREIGN INTELLIGENCE		
Compliance: Implementation is in accordance with MMES letter No. AE92-044 dated 06/10/1992.				

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ALBUQUERQUE DIRECTIVES (ALs) **ALs can be found at the following Internet address:** **http://prp.sandia.gov/**				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
AL-SD 56XB, Revision 2	03/31/2004	DEVELOPMENT AND PRODUCTION MANUAL	10 08/22/2007	
IBP-202	09/18/2006	RECORD OF ASSEMBLY AND DISASSEMBLY	Issue B	
IBP-401	11/30/2006	PRODUCT DEFINITION EXCHANGE PROCESS	Issue A	
IBP-404	12/17/2003	ENGINEERING AUTHORIZATION SYSTEM	Issue B	
PSLM	02/16/2006	PRIMARY STANDARDS LABORATORY MEMORANDUM		
TBP-CM	02/14/2005	CONFIGURATION MANAGEMENT	Issue A	
TBP-PRP	05/04/2001	PRODUCT REALIZATION PROCESS	Issue E	
TBP-SYS	10/20/2004	NWC TECHNICAL BUSINESS PRACTICE SYSTEM	Issue H	
TBP-000	05/04/2001	PROGRAM MANAGEMENT	Issue E	
TBP-001	10/02/2000	MAJOR ASSEMBLY RELEASE SYSTEM	Issue C	
TBP-100	09/16/2005	CONCURRENT QUALIFICATION	Issue G	
TBP-101	01/22/2007	ENGINEERING EVALUATION PROCESS	Issue H	
TBP-200 TBP-201	09/18/2006 09/18/2006	PRODUCT IDENTIFICATION AND TRACEABILITY WEAPON IDENTIFICATION SYSTEMS AND MARKING CRITERIA	Issue E Issue D	
TBP-202	09/18/2006	RECORD OF ASSEMBLY AND DISASSEMBLY	Issue E	
TBP-203	02/20/2004	WEAPON RECORD CARDS	Issue E	
TBP-300	02/15/2005	PRODUCT DEFINITION	Issue E	
TBP-301	10/02/2006	METHODS OF DEFINITION	Issue J	

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
TBP-302	09/18/2006	PRODUCT AND EQUIPMENT DESIGNATIONS	Issue D	
TBP-303	01/24/2007	SEVEN-DIGIT MATERIAL AND PROCESS SPECIFICATIONS	Issue D	
TBP-304	03/11/2003	DEFINING COMMERCIAL PRODUCT IN THE ENGINEERING DRAWING SYSTEM	Issue E	
TBP-305	09/18/2006	CONFIGURATION OF TYPE WEAPONS	Issue D	
TBP-306	05/02/2003	SOFTWARE PRODUCT PROCESSES	Issue E	
TBP-307	05/02/2003	USE OF MECHANICAL MODELS IN THE PRODUCT REALIZATION PROCESS	Issue D	
TBP-308	02/06/2006	COMPUTER-AIDED DESIGN PROCESS FOR ELECTRICAL PRODUCTS	Issue A	
TBP-400 TBP-401	10/02/2000 11/30/2006	DESIGN CONTROL DEFINITION CONTROL	Issue D Issue E	
TBP-402	09/22/2004	PRODUCT CONTROL	Issue F	
TBP-403	02/13/2006	REVIEWS	Issue E	
TBP-404	05/04/2005	ENGINEERING AUTHORIZATION SYSTEM	Issue F	
TBP-502	01/21/2002	DISTRIBUTION OF NON-ELECTRONIC PRODUCT DEFINITION USING ELECTRONIC TRANSMITTAL METHODS	Issue A	
TBP-600	10/02/2000	PROCUREMENT	Issue D	
TBP-601	10/02/2000	PROCUREMENT CLASSES OF WEAPON PRODUCT	Issue C	

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
TBP-602	03/11/2003	INTERPRETATION OF PROCUREMENT INDEX	Issue D	
TBP-700	03/11/2003	PRODUCT ACCEPTANCE AND CONTROL OF NONCONFORMANCE	Issue E	
TBP-701	04/19/2007	ACCEPETANCE EQUIPMENT INTERFACES	Issue D	
TBP-702	05/29/2007	NONCONFORMING MATERIAL	Issue F	
TBP-703	06/01/2001	PRODUCT REPROCESSING AND REWORKING	Issue D	
TBP-704 TBP-800	10/02/2000 07/30/2001	EVALUATION AND DISPOSITION OF DISCREPANT WEAPON MATERIAL STOCKPILE MANAGEMENT	Issue D Issue F	
TBP-801	10/02/2000	LABORATORY AND FLIGHT TEST MATERIAL	Issue D	
TBP-802	10/02/2000	TELEMETRY PROCEDURES	Issue D	
TBP-803	12/06/2006	NON-NUCLEAR ASSURANCE PROGRAM	Issue F	
TBP-804	12/06/2006	STOCKPILE SUPPORT MATERIAL	Issue F	
TBP-805	12/06/2006	REPAIR AND RETROFIT OF WEAPONS AND ANCILLARY EQUIPMENT	Issue F	
TBP-901	10/02/2000	INTEGRATED SAFETY PROCESS FOR NUCLEAR WEAPONS OPERATIONS AND FACILITIES	Issue B	
ORO O 350 Chapter III	 05/31/1996	**CONTRACTOR HUMAN RESOURCE PROGRAMS** FEDERAL LABOR STANDARDS	 3 01/26/2004	

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OTHER APPLICABLE DOCUMENTS				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
41 CFR 102-192	**08/25/2008**	**MAIL MANAGEMENT**		
Compliance: Compliance will be contingent upon approval of an implementation plan to be submitted to DOE by 03/10/2009.				
BOP-50.002	09/19/2006	ESTABLISHMENT OF A NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA) VALUE MANAGEMENT (VM) POLICY		
BOP-50.003	06/06/2007	ESTABLISHMENT OF A NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA) INDEPENDENT PROJECT REVIEW (IPR) POLICY		
Compliance: Compliance with respect to Operation Expense and Work for Others projects will be addressed upon receipt of Y-12 Site Office implementation guidance.				
DOE-HQ Memorandum	11/08/2006	IMPROVED CYBER SECURITY PROTECTION FOR CLASSIFIED COMPUTER SYSTEMS		
MANUAL	04/01/2007	BASELINE SECURITY MANUAL (OFFICIAL USE ONLY)		
NAP 14.1-C	05/02/2008	NNSA BASELINE CYBER SECURITY PROGRAM		See Footnote (2)
Compliance: Compliance will be in accordance with an implementation plan approved by DOE on 10/28/2008.				
NAP 14.2-C	05/02/2008	NNSA CERTIFICATION AND ACCREDITATION (C&A) PROCESS FOR INFORMATION SYSTEMS		See Footnote (2)
Compliance: Compliance will be in accordance with an implementation plan approved by DOE on 10/28/2008.				

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**NOTES AND COMMENTS**
NAP 14.3-B	05/02/2008	TRANSMISSION OF RESTRICTED DATA OVER SECRET INTERNET PROTOCOL ROUTER NETWORK (SIPRNet)		See Footnote (2)
OMB-Circular A-123	12/21/2004	MANAGEMENT'S RESPONSIBILITY FOR INTERNAL CONTROL		
Compliance: Compliance will be in accordance with an Implementation Plan approved by DOE on 03/06/2006.				
OPS-323	10/21/2004	DATA INTERFACE AGREEMENT: INTEGRATED CONTRACTOR INTERFACE FOR DEPARTMENT OF ENERGY I-MANAGE PROGRAM – STARS PROJECT		
YSO-CRD-06-01 Revision 1	07/06/2007	DIRECTIVES SYSTEM PROCESS		

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STANDARDS/REQUIREMENTS IDENTIFICATION DOCUMENTS (S/RIDs)				
FUNCTIONAL AREA (FA)	**TITLE**	**REVISION NUMBER**	**DOE/ORO APPROVAL DATE**	**NOTES AND COMMENTS**
1.0	MS - Management Systems	18	11/26/2008	Type 1 Change
2.0	QA - Quality Assurance	14	11/24/2008	
3.0	CM - Configuration Management	6	06/13/2006	Type 1 Change
4.0	TQ - Training and Qualification	15	11/26/2008	Type 1 Change
5.0	EM - Emergency Management	20	11/17/2008	
7.0	**EG - Engineering Program**	**33**	**01/07/2009**	**Type 1 Change**
8.0	**CP - Construction Program**	**28**	**01/07/2009**	**Type 1 Change**
9.0	OP - Operations	4	06/05/2006	
10.0	MA - Maintenance	15	12/18/2007	
11.0	RP - Radiation Protection	7	11/13/2007	
12.0	FP - Fire Protection	15	04/10/2008	
13.0	**TR - Packaging and Transportation**	**17**	**12/16/2008**	
18.0	FS - Facility (Nuclear) Safety	19	05/21/2008	
19.0	SH - Occupational Safety and Health	31	04/24/2008	
20.0	**EP - Environmental Protection**	**20**	**01/06/2009**	
21.0	CS - Nuclear Criticality Safety	3	05/09/2007	

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APPROVED S/RID SOURCE DOCUMENTS[3]				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
10 CFR	01/24/1997	ENERGY		MS, QA, TQ, EM, EG, CP, RP, FP, FS, SH, EP
28 CFR	07/01/1997	JUDICIAL ADMINISTRATION		FP
29 CFR	04/23/1998	LABOR		CM, TQ, EM, EG, CP, FP, FS
33 CFR		NAVIGATION AND NAVIGABLE WATERS		CP, EP
36 CFR		PARKS, FORESTS, AND PUBLIC PROPERTY		MS, EM, EG, CP, FP, EP
40 CFR		PROTECTION OF THE ENVIRONMENT		EM, EG, CP, TR, FS, SH, EP
40 CFR 144		SAFE DRINKING WATER ACT		EP
43 CFR		PUBLIC LANDS: INTERIOR		EP
48 CFR		FEDERAL ACQUISITION REGULATIONS SYSTEM		MS
49 CFR	10/01/2000	TRANSPORTATION		TQ, EM, TR
50 CFR		WILDLIFE AND FISHERIES		EP
5400.5	02/08/1990	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT	2	EG, CP, EP
5480.19	07/09/1990	CONDUCT OF OPERATIONS REQUIREMENTS FOR DOE FACILITIES	2	CM, TQ, EG, CP, OP
5480.20A	02/20/1991	PERSONNEL SELECTION, QUALIFICATION, TRAINING, AND STAFFING REQUIREMENTS AT DOE REACTOR AND NON-REACTOR NUCLEAR FACILITIES	1	TQ, EG, CP
5480.21	12/24/1991	UNREVIEWED SAFETY QUESTIONS		TQ

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
DE-AC05-00OR22800	08/31/2000	BWXT Y-12, L.L.C. CONTRACT WITH DOE/NNSA		MS, EG, CP
DOE O 150.1	05//08/2008	CONTINUITY PROGRAMS		EM
DOE O 151.1C	11/02/2005	COMPREHENSIVE EMERGENCY MANAGEMENT SYSTEM		TQ, EM, EG, CP
DOE O 153.1	06/27/2007	DEPARTMENTAL RADIOLOGICAL EMERGENCY RESPONSE ASSETS		EM
DOE O 200.1	09/30/1996	INFORMATION MANAGEMENT PROGRAM		MS, EG, CP
DOE O 225.1A	11/26/1997	ACCIDENT INVESTIGATIONS		EG, CP, SH
DOE O 226.1A	07/31/2007	IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY		QA, TQ
DOE M 231.1-1A	03/19/2004	ENVIRONMENT, SAFETY AND HEALTH REPORTING MANUAL	2 06/12/2007	EG, CP, RP, FP, SH, EP
DOE M 231.1-2	08/19/2003	OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION		MS
DOE O 341.1A	10/18/2007	FEDERAL EMPLOYEE HEALTH SERVICES		SH
DOE O 414.1C	06/17/2005	QUALITY ASSURANCE		QA, TQ
DOE O 420.1B	12/22/2005	FACILITY SAFETY		EM, EG, CP, OP, FP, CS
DOE G 420.1-3	09/27/2007	IMPLEMENTATION GUIDE FOR DOE FIRE PROTECTION AND EMERGENCY SERVICES PROGRAMS FOR USE WITH DOE O 420.1B, FACILITY SAFETY		EG, FP

APPROVED S/RID SOURCE DOCUMENTS[3]				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
DOE G 421.1-2	10/24/2001	IMPLEMENTATION GUIDE FOR USE IN DEVELOPING DOCUMENTED SAFETY ANALYSES TO MEET SUBPART B OF 10 CFR 830		FS
DOE O 425.1C	03/13/2003	STARTUP AND RESTART OF NUCLEAR FACILITIES		MS
DOE O 430.1B	09/24/2003	REAL PROPERTY ASSET MANAGEMENT		EG, MA
DOE O 433.1	06/01/2001	MAINTENANCE MANAGEMENT PROGRAM FOR DOE NUCLEAR FACILITIES		CM, EG, TQ
DOE O 433.1A	02/13/2007	MAINTENANCE MANAGEMENT PROGRAM FOR DOE NUCLEAR FACILITIES		EG, CP, MA
DOE M 435.1-1	07/09/1999	RADIOACTIVE WASTE MANAGEMENT MANUAL		TQ, EG, CP, EP
DOE O 435.1	**07/09/1999**	**RADIOACTIVE WASTE MANAGEMENT**	**1 08/28/2001**	**EG, CP, EP**
DOE O 440.1A	03/27/1998	WORKER PROTECTION MANAGEMENT FOR DOE FEDERAL AND CONTRACTOR EMPLOYEES		EG
DOE O 440.2B	11/27/2002	AVIATION MANAGEMENT AND SAFETY	1 11/19/2006	TR
DOE M 441.1-1	03/07/2008	NUCLEAR MATERIAL PACKAGING MANUAL		EG
DOE M 442.1-1	11/16/2006	DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, AND HEALTH		SH
DOE O 450.1A	06/04/2008	ENVIRONMENTAL PROTECTION PROGRAM		EP

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DOE M 450.4-1	11/01/2006	INTEGRATED SAFETY MANAGEMENT SYSTEM MANUAL		SH
DOE P 456.1	09/15/2005	SECRETARIAL POLICY STATEMENT ON NANOSCALE SAFETY		SH
DOE O 460.1B	04/04/2003	PACKAGING AND TRANSPORTATION SAFETY		TR
DOE O 460.2A	12/22/2004	DEPARTMENTAL MATERIALS TRANSPORTATION AND PACKAGING MANAGEMENT		TR
DOE M 461.1-1	**09/29/2000**	**PACKAGING AND TRANSFER OF MATERIALS OF NATIONAL SECURITY INTEREST MANUAL**	**1 07/26/2005**	**TR**
DOE O 461.1A	04/26/2004	PACKAGING AND TRANSFER OR TRANSPORTATION OF MATERIALS OF NATIONAL SECURITY INTEREST		TQ, TR
DOE M 470.4-1	08/26/2005	SAFEGUARDS AND SECURITY PROGRAM PLANNING AND MANAGEMENT	1 03/07/2006	EM
DOE M 470.4-2	08/26/2005	PHYSICAL PROTECTION	1 03/07/2006	TQ, TR
DOE-SNL-TYPEBARG	02/29/2008	TIEDOWN PROCEDURES FOR TYPE A, TYPE B, ARG, AND MISCELLANEOUS CONTAINERS		TR
DOE-STD-1032-92	12/1992	GUIDE TO GOOD PRACTICES FOR OPERATIONS ORGANIZATION AND ADMINISTRATION		MS
DOE-STD-1066-99	07/31/1999	DOE STANDARD - FIRE PROTECTION DESIGN CRITERIA		EG
DOE-STD-1073-2003	10/2003	CONFIGURATION MANAGEMENT		MS, CM, EG, CP

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REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
DOE-STD-1090-2007	08/2007	HOISTING AND RIGGING		SH
DOE-STD-1189-2008	03/01/2008	INTEGRATION OF SAFETY INTO THE DESIGN PROCESS		EG
DOE-STD-3003-2000	01/31/2000	DOE STANDARD - BACKUP POWER SOURCES FOR DOE FACILITIES		EG
DOE-STD-3024-98	10/31/1998	DOE STANDARD - CONTENT OF SYSTEM DESIGN DESCRIPTIONS		EG
EO 12898		ENVIRONMENTAL JUSTICE		EP
FFCA		FEDERAL FACILITIES COMPLIANCE ACT		EP
NFPA CODES AND STANDARDS	04/23/1998	CODES AND STANDARDS		EG, CP, FP
ORR PCB FFCA		OAK RIDGE RESERVATION POLYCHLORINATED BIPHENYL FEDERAL FACILITIES COMPLIANCE AGREEMENT		EP
PUBLIC LAW 104-113		NATIONAL TECHNOLOGY TRANSFER AND ADVANCEMENT ACT OF 1995		EG, CP
QC-1, Rev. 10	02/10/2004	DOE/NNSA WEAPON QUALITY POLICY (QC-1)		MS, QA, EG
SEN-35-91	09/09/1991	NUCLEAR SAFETY POLICY		TQ
STANDARD BUILDING CODE (SBC)		SOUTHERN BUILDING CODE CONGRESS INTERNATIONAL (SBCCI)		CP
TITLE 55 AND 65		TENNESSEE MOTOR VEHICLE LAWS ANNOTATED		TR
TENNESSEE CODE, TITLE 68	04/23/1998	HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION		FP

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

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ATTACHMENT E – BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B – List of Applicable Directives

APPROVED S/RID SOURCE DOCUMENTS[3]				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
TCA TITLE 69		WATERS, WATERWAYS, DRAINS AND LEVEES		EP
THWRA		TENNESSEE HAZARDOUS WASTE REDUCTION ACT (THWRA)		EP
TN CODE ANNOTATED		TENNESSEE CODE ANNOTATED		EM, EG
TN 1200		RULES OF THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION		CP, EP
TN 1200-1-13		TENNESSEE INACTIVE HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION PROGRAM	1	EP
TN 1200-1-7		TENNESSEE SOLID WASTE RULES		EP
TN 1200-1-7.02		TENNESSEE SOLID WASTE DISPOSAL ACT		EP
TN 1200-3-10		TENNESSEE AIR QUALITY ACT		EP
TN 1200-3-20		TENNESSEE AIR QUALITY ACT		EP
TN 1200-3-27		TENNESSEE AIR QUALITY ACT		EP
TN 1200-4-5		TENNESSEE WATER QUALITY CONTROL ACT		EP
TN 1200-5-8		WATER REGISTRATION REQUIREMENTS		EP
TN OVERSIGHT AGREEMENT	06/27/1996	TENNESSEE OVERSIGNT AGREEMENT (TOA)		EM, EP
TWRA		TENNESSEE WILDLIFE RESOURCES AGENCY (TWRA) BOATING REGULATIONS		TR

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

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ATTACHMENT E – BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B – List of Applicable Directives

APPROVED S/RID SOURCE DOCUMENTS[3]				
REQUIRED COMPLIANCE DOCUMENT	**DATE**	**TITLE**	**THROUGH CHANGE**	**FUNCTIONAL AREA(S)**
YSO-CRD-02-01, Rev. 2	02/15/2008	IDENTIFICATION, EVALUATION, AND CONTROL OF NON-NUCLEAR CHEMICAL HAZARDS		EG, FS
YSO-CRD-03-01, Rev. 4	03/21/2008	START-UP AND RESTART OF OPERATIONS, ACTIVITIES, & FACILITIES AT Y-12		MS
YSO-CRD-07-01 Rev. 1	02/15/2008	AUTHORIZATION AGREEMENTS		EG, CP, FS

FOOTNOTES:

(1) This document is not directly applicable to the Contractor; it is included in the list of applicable documents because the Contractor must provide certain information or input to DOE in order for DOE to comply with requirements specified in the document.

(2) This document comprises a component of the Program Cyber Security Plan that is directed by DOE O 205.1A, DEPARTMENT OF ENERGY CYBER SECURITY MANAGEMENT, dated 12/04/2006.

(3) These documents are ES&H related and appear in one or more of the current Standards/Requirements Identification Document (S/RID) Functional Areas. In an S/RID, the document may be referenced in its entirety or by certain chapters, paragraphs, or sections taken from the document. In addition, information regarding document applicability may be obtained from the specific S/RID.

(4) Although this document is not directly applicable to the Contractor, it is included in the list of applicable documents to establish requirements for audit resolution and follow-up systems.

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ATTACHMENT F – PERFORMANCE GUARANTEE AGREEMENT

Attached are the Performance Agreements executed on behalf of Bechtel National Inc. by Thomas F. Hash on May 5, 2000 and on Behalf of B&W Technologies Inc. on April 24, 2000.

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ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

NATIONAL NUCLEAR SECURITY ADMINISTRATION
U.S. DEPARTMENT OF ENERGY (U.S. DOE)
WORK AUTHORIZATION DIRECTIVE (WAD)
TO
Babcock and Wilcox Technical Services, L.L.C. (B&W Y-12)

PROGRAM TITLE: **American Recovery and Reinvestment Act**

WORK AUTHORIZATION NUMBER: **1.10.01** Revision**: 1**

PERFORMANCE PERIOD: **May 7, 2009 through September 30, 2011**

1. Funding and Definitization Introduction

The funds authorized for this Work Authorization Directive are subject to the following:

Baseline Value: **$267,000,000 (May 7, 2009 to September 30, 2011)**

Authorization Value: $213,600,000.00

Limitation of Cost: $23,748,420.00

Pursuant to the clause B.04 and H.19, entitled "Work Authorization System," total funds in the amount of $213,600,000.00 *(100% of funds to be obligated in FY 09)* are authorized for the performance of this WAD and made available for payment of allowable costs and fee earned related only to the Recovery Act work from May 7, 2009 through September 30, 2011. The contractor is approved to incur costs up to $23,748,420.00 (Limitation of Cost amount) of the Authorization amount pending definitization of the WAD.

The definitization schedule:

Issue Mod/WAD	May 7, 2009
Receive Program/Cost plan	May 31, 2009
Agree to baseline and fee	July 31, 2009
Definitization Baseline on agreement	August 21, 2009

Associated accounting and appropriation data is as follows:

(Budget Outlay in the chart below is the Limitation of Cost, of which the Contractor is not authorized to exceed. It is noted that funding is obligated by DOE Oak Ridge Office (ORO). NNSA YSO provides authorization to use the ORO obligations.)

IEWO	Project	*Budget* Authority	*Budget* Outlay
M1WALA09G1	Alpha 5	$89,600,000.00	$9,788,237.00
M1WEM09G2	WEMA	6,400,000.00	1,333,599.00
M1WBET09G3	Beta 4	16,000,000.00	4,383,835.00
M1WSAL09G4	Salvage Yard	28,000,000.00	5,772,782.00
M1WFIL09G5	Building 9206	5,600,000.00	617,206.00
M1WDEM09I8	Building 9735	4,000,000.00	1,055,343.00
M1WBIL09G6	Biology Complex	64,000,000.00	797,418.00
	Total	**$213,600,000.00**	**$23,748,420.00**

2. The specific statement of work funded by this work authorization pursuant to the American Recovery and Reinvestment Act, Pub. L. 111-5, (Recovery Act) is as follows:

The American Recovery and Reinvestment Act (ARRA) missions under the Waste Management and Integrated Facilities Disposition Program are to accelerate demolition of high-priority surplus contaminated facilities which are deteriorating at an increasing rate and currently pose the highest risk to human health, the environment and the Y-12 mission, and to accelerate remediation of the most significant sources of off-site mercury releases. These activities will reduce immediate risk to the environment, the public, and the Y-12 workforce from legacy facilities and associated environmental releases; stimulate the local economy by immediately producing new jobs, with emphasis on the local small business subcontracting community; reduce the inventory of legacy hazardous and radioactive waste with the potential to release contaminants to the environment; conserve energy and reduce surveillance and maintenance (S&M) costs associated with legacy facilities; and address long-standing infrastructure issues.

Regardless of WAD/BCP values, B&W Y-12 is always limited to the values of funding provided.

This document may constitute an interim authorization and may be revised based on subsequent approved Project Operating Plans (POPs) as deemed appropriate.

Activities will be managed by Babcock & Wilcox Technical Services Y-12, L.L.C. (B&W Y-12), under Contract Number DE-AC05-00-OR22800.

This WAD authorizes the execution of the work scope (with the exception of capital projects) identified in the Prioritized Project List (PPL), which is included in this WAD. Cost estimates are being developed to support the PPL's.

Basis of estimates (BOEs) have been incorporated into the Prioritized Project List (PPLs). B&W Y-12 may execute the activities in the PPL as provided in this document. Any changes to WAD technical scope, cost, or schedule that meet the definition of Level 1 or 2 baseline change must be approved by the Y-12 Site Office (Level 2) and/or NNSA Headquarters (for Level 1 only) utilizing the Baseline Change Proposal (BCP) process in accordance with B&W Y-12 Procedure Y30-601.

This WAD approves budget authorization values and scope for the following projects:

SUMMARY STATEMENT OF WORK:

The current American Recovery and Reinvestment Act (ARRA) scope under the Waste Management and Integrated Facilities Disposition Program consists of the demolition of five facilities, the removal of legacy material in part or total from 2 facilities, decontamination and decommissioning (D&D) of a filter housing in a single facility, and the remediation of two facilities/areas over the next 30 months (March 2009-September 2011). Specific projects include:

- Removal of All Legacy Material from 9201-5 (Alpha-5)
- Removal of Legacy Material from the second floor of 9204-4 (Beta-4)
- Demolition of Buildings 9211, 9220, 9224, 9769
- Deactivation and Demolition (D&D) of Building 9206 bag filter house and associated recovery furnace

ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

- Demolition of Building 9735
- Salvage Yard Remediation
- West End Mercury Area (Storm Sewer) Remediation

The Project Code for all projects included in this WAD is 2002100.

Alpha-5 Legacy Material Disposition Project

Background

The Alpha-5 (9201-5) building is approximately 613,000 square feet and was constructed in 1946 to house alpha-stage Calutrons for uranium enrichment. It is currently designated as a Nuclear Hazard Category 3 facility. In addition to uranium enrichment, past operations in the facility include COLEX enrichment operations, and various metallurgical and machining processes involving uranium and beryllium. Alpha-5 includes beryllium areas, legacy material, and facility contamination which may involve enriched uranium, depleted uranium, and lithium. Contaminants of concern include, but are not limited to, mercury, asbestos, polychlorinated biphenyls (PCBs), beryllium, and radiological contamination.

Scope

This scope of work for the Alpha-5 Legacy Material Disposition Project is to complete removal and disposition of all legacy materials in Building 9201-5 (Alpha-5) to prepare the facility for eventual deactivation and demolition (D&D) under the Integrated Facility Disposition Program (IFDP). The contractor shall furnish all labor, equipment, materials, and supplies necessary to complete the scope of work in a safe, compliant and efficient manner. All work shall be in accordance with applicable federal, state, and local regulations, codes and standards, DOE Orders, and Environment, Safety and Health (ES&H) requirements.

Legacy materials/waste will be further characterized if necessary, treated if required, and prepared/packaged for shipment to the EMWMF, ORR Landfills, or shipped to other appropriate, permitted disposal facilities. Legacy materials include items such as, but not limited to: non-process equipment, containers, tools and miscellaneous contaminated office equipment. Legacy materials are defined as easily removable items that involve minimal reconfiguration efforts, e.g. unbolting, unplugging, wire cutting, or cold cutting. Those materials that have been determined to be either radiologically or chemically contaminated and are waste, may require segregation, size reduction, compaction, and treatment as necessary to meet WACs.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation and an Action Memorandum for a time-critical removal action which will be prepared by DOE-EM. This Action Memorandum combines the scope of this project with the scope of the Beta-4 Legacy Material Disposition Project, thereby permitting a shared and combined Waste Handling Plan (WHP). A Waste Handling Plan (WHP) including a Sampling and Analysis Plan (SAP), as well as characterization, preparation of waste profiles, and any necessary sorting/segregation and/or size reduction prior to transportation to an approved disposal site are included in this work scope. Waste profiles, for waste to be disposed at the Environmental Management Waste Management Facility (EMWMF), will be developed and submitted to the EMWMF WAC Attainment Team for approval prior to disposal at the EMWMF. Scope also includes coordination of waste shipments with the DOE contractor for EMWMF and Landfill operations, including input to the contractor's Waste Generation Forecast. Some waste may be shipped to an approved off-site facility for treatment and/or disposal. This

project scope includes preparation of a Removal Action Report (RmAR) for regulatory approval (Alpha-5 and Beta-4 legacy material disposition).

Project reporting will be performed in accordance with the requirements of the ARRA. Project Performance shall be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

Section A: Contractor Recovery Act Schedule or Milestone Requirements	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Mobilize radcon and industrial hygiene teams to initiated health and safety characterization	6/2009
Initiate legacy material removal	6/2009
Complete first shipment of waste for disposal	6/2009
Complete Waste Handling Plans for legacy material disposition	9/2009*
Complete removal of enough excess nuclear material to downgrade the facility hazard category to a “non-nuclear facility	10/2009
Complete removal of all legacy material from the 4th floor of Alpha-5	3/2010
Complete removal of all legacy material from the 2nd floor of Alpha-5	9/2010
Complete removal of all legacy material from the 3rd floor of Alpha-5	3/2011
Complete Legacy Material Disposition for Alpha-5	9/2011
Section B: Contractor Recovery Act Performance Outcomes and Measures	
Complete Legacy Material Disposition for Alpha-5 according to schedule.	
Section C: Contractor Recovery Act Deliverables	
Legacy Material Disposition for Alpha-5.	

*One Waste Handling Plan and one RmAR may be submitted for both Alpha-5 and Beta-4. This is permissible since the LMD of both projects was covered in one action memorandum for time critical removal action.

West End Mercury Area (WEMA) Storm Sewer Remediation Project

The West End Mercury Area (WEMA) consists of former mercury use buildings Beta-4 (9204-4), Alpha-4 (9201-4), and Alpha-5 (9201-5) located in the west end of the Y-12 main plant area, including mercury contaminated soils and storm sewers in the immediate vicinity.

Scope

This scope of work for the West End Mercury Area (WEMA) Storm Sewer Remediation project is to complete the storm sewer remedial actions specified in the Upper East Fork Poplar Creek (UEFPC) Phase I Record of Decision (ROD). The project objective is to remove contaminated sediments from the storm sewers located in the WEMA of the Y-12 National Security Complex (Y-12), and reline or repair storm sewers and catch basins as needed. The WEMA consists of former mercury use buildings Beta-4 (9204-4), Alpha-4 (9201-4), and Alpha-5 (9201-5) located in the west end of the Y-12 main plant area, including mercury contaminated soils and storm sewers in the immediate vicinity. The project will:

- Complete design activities including video inspection of storm sewer pipe and sampling during video inspection;
- Prepare an Engineering Study Report;
- Prepare combined Remedial Action Work Plan (RAWP) and Waste Handling Plan (WHP), as needed;
- Complete storm sewer remediation in accordance with the UEFPC Phase I ROD
- Dispose of waste that is generated, including soil, sediment, and rinse water;
- Prepare Phased Construction Completion Report (PCCR).

A video inspection will be conducted on the storm sewer west of Outfall 200. The results of the video inspection and engineering study will determine the actual length of storm sewer to be cleaned and relined. This project assumes approximately 11,500 LF of storm sewer would be cleaned and 2,650 LF will be relined. Remediation activities include mobilization, relining storm sewer system, sampling, transporting soil and sediment to the pretreatment area, pre-treating the sediment and soil, transporting the sediment and soil to the Environmental Management Waste Management Facility (EMWMF) or other approved disposal facility for disposal and demobilizing. Contaminated sediment and soil that do not meet the WAC for EMWMF will be sent off-site for treatment and disposal. It is assumed that approximately 500 CY of contaminated sediment and 100 CY of contaminated soil will be generated from cleaning and excavation to repair sections of the storm sewer. Sampling will be performed to determine necessary pretreatment and for documentation with EMWMF waste acceptance criteria. Scope assumes 15% of storm sewer wastes will require low temperature thermal desorption (LTTD) treatment and stabilization (this includes 75 CY of sediment and 15 CY of soil). Scope assumes 500,000 gallons of wastewater will be treated at an on-site treatment facility. Scope includes coordination of waste shipments with the DOE contractor for EMWMF, including input to the contractor's Waste Generation Forecast. This project includes preparation of a Phased Construction Completion Report.

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ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act (ARRA) of 2009. Project Performance shall be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Issue Request for Proposal for inspection of storm sewers	6/2009
Complete video inspection of storm sewers	9/2009
Complete draft engineering study reporting on inspection results	9/2009
Complete Remedial Action Work Plan/Waste Handling Plan for the storm sewers	5/2010
Complete cleaning, re-lining, and repair of storm sewers and issue Phased Construction Completion Report to Regulators for approval	9/2011
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete WEMA Storm sewer remediation according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
West End Mercury Area (WEMA) storm sewer video inspection, cleaning, relining and repair.	

Beta-4 Legacy Material Disposition Project

Background

Beta-4 is a 313,771 gross square feet facility that was constructed in 1944–45 housing Calutrons for uranium enrichment. Other past operations in the facility include production of Lithium-6 using the electroexchange separation process (ELEX) and other weapon fabrication support operations. Depleted Uranium, Highly Enriched Uranium and thorium are considered the main radiological contaminants. The primary hazards include lead, polychlorinated biphenyls (PCB)s, Freon, oils, mold, mildew, and asbestos. Other contaminants of concern include the potential for beryllium and mercury contamination on the surfaces and structural components in the facility.

Scope

This scope of work for the Beta-4 (Building 9204-4) Legacy Material Disposition Project is to complete removal and disposition of legacy materials from the entire second floor of Building 9204-4 (Beta-4) in preparation for eventual deactivation and demolition (D&D) under the Integrated Facility Disposition Program (IFDP). The contractor shall furnish all labor, equipment, materials, and supplies necessary to complete the scope of work in a safe, compliant and efficient manner. All work shall be in accordance with applicable federal, state, and local regulations, codes and standards, DOE Orders, and Environment, Safety and Health (ES&H) requirements.

Legacy materials/waste will be further characterized if necessary, treated if required, and prepared/packaged for shipment to the EMWMF, ORR Landfills, or shipped to other appropriate, permitted disposal location(s). Legacy materials include items such as, but not limited to: non-process equipment, containers, tools and miscellaneous contaminated office equipment. Legacy materials are defined as easily removable items that involve minimal reconfiguration efforts, e.g. unbolting, unplugging, wire cutting, or cold cutting. Legacy materials that have been determined to be either radiologically or chemically contaminated and are waste, may require segregation, size reduction, compaction, and treatment as necessary to meet waste acceptance criteria (WAC)s.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation and an Action Memorandum for a time-critical removal action which will be prepared by DOE-EM. This Action Memorandum combines the scope of this project with the scope of the Alpha-5 Legacy Material Disposition Project, thereby permitting a shared and combined Waste Handling Plan (WHP). A Waste Handling Plan (WHP) including a Sampling and Analysis Plan (SAP) will be prepared (Alpha-5 and Beta-4). In addition, characterization, preparation of waste profiles, sorting/segregation, and size reduction prior to transportation to approved disposal sites are included in this work scope. Waste profiles, for waste to be disposed at the Environmental Management Waste Management Facility (EMWMF), will be developed and submitted to the EMWMF WAC Attainment Team for approval prior to waste disposal. Scope also includes coordination of waste shipments with the DOE contractor for EMWMF and Landfill operations, including input to the contractor's Waste Generation Forecast. Some waste may be shipped to an approved off-site facility for treatment and/or disposal. This project scope includes preparation of a Removal Action Report (RmAR) for regulatory approval (Alpha-5 and Beta-4 legacy material disposition).

ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act (ARRA) of 2009. Project Performance shall be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, schedule for obtaining approval for EMWMF shipments	5/31/09
Mobilize radcon and industrial hygiene teams to initiated health and safety characterization	6/2009
Initiate legacy material removal	6/2009
Complete first shipment of waste for disposal	6/2009
Complete Waste Handling Plans for legacy material disposition	9/2009*
Complete removal of legacy material from the high bay and office areas on the 2nd floor	6/2010
Complete removal of legacy material from the Production Storage and Work Area on the 2nd floor	3/2011
Complete Legacy Material Disposition for the second floor of Beta-4	9/2011
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete Legacy Material Disposition for Beta-4 according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
Legacy Material Disposition for Beta-4.	

*One Waste Handling Plan and one RmAR may be submitted for both Alpha-5 and Beta-4. This is permissible since the LMD of both projects was covered in one action memorandum for time critical removal action.

Y-12 Salvage Yard Scrap Removal Project

Background

The Y-12 Salvage Yard is located at the west end of the Y-12 Plant and has been used since the early 1970's to receive scrap metal from Y-12 Plant operations. Some materials that were deposited were contaminated with radioactive materials, principally depleted uranium and uranium enriched in U-235. There is a possibility that some of the material may be considered hazardous under RCRA and/or TSCA. In the late 1980's, the Perimeter Intrusion Detection Assessment System (PIDAS) was constructed, which split the salvage yard into two segments. The segment outside of the PIDAS fence contains three open piles of radioactive scrap metal designated as SY-H1 Area 1, SY-H1 Area 2 and SY-C3 Area 3. These three piles were partially characterized in 1993 for total uranium, percent of U-235 by weight, and thorium. Characterization concluded that the primary contaminant was depleted uranium. Also, outside the PIDAS fence are 184 filled sealand containers and ~40 empty sealand containers. The portion of the salvage yard inside the PIDAS fence contains two open piles of radioactive scrap metal designated as SY-H1 Area 4, 37 sealand containers, and ~545 B-25 boxes.

Scope

The Y-12 Salvage Yard Scrap Removal Project will complete removal and disposition of scrap at the Y-12 National Security Complex in accordance with those portions of the selected remedy in the Record of Decision (ROD) for Phase II Interim Remedial Actions for Contaminated Soils and Scrapyard in Upper East Fork Poplar Creek (UEFPC) which are applicable to surface scrap metal.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation. A Waste Handling Plan (Volume 2) will be prepared by the contractor for regulatory review and approval. Waste profiles will be developed and submitted to the Environmental Management Waste Management Facility (EMWMF) WAC Attainment Team for approval prior to waste disposal at EMWMF. Scope will include coordination of waste shipments with the DOE contractor for EMWMF and Landfill operations, including input to the contractor’s Waste Generation Forecast. Remediation includes characterization and treatment as needed to meet waste acceptance criteria. Scrap will be transported to either EMWMF, NTS, or an approved off-site facility for treatment and/or disposal. Following completion of the remedial action, a Phased Construction Completion Report (PCCR) will be prepared to summarize remediation activities and post remediation surveillance and maintenance and monitoring requirements and to document that the remedial action was performed in compliance with the requirements of CERCLA.

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act of 2009. Project Performance will be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

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ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Initiate container characterization and repackaging operations	6/2009
Mobilize subcontractor	6/2009
Initiate legacy material removal	6/2009
Complete first off-site shipment of waste for disposal	6/2009
Complete disposition of all containerized waste	12/2010
Complete disposition of all materials	6/2011
Issue the Phased Construction Completion Report to Regulators for Approval	9/2011
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete disposition of all materials at the Y-12 Salvage Yard according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
Y-12 Salvage Yard materials removal and disposition.	

9735 D&D PROJECT

Background

Building 9735, Research Services Laboratory, is an approximately 15,000 ft^2 facility that was constructed in 1946. Contaminants of concern for Building 9735 include asbestos and lead with minimal radiological contamination.

Scope

The scope of work for Building 9735 is to complete deactivation and demolition (D&D) to grade (slab). The contractor shall furnish all labor, equipment, materials, and supplies necessary to complete the scope of work in a safe, compliant and efficient manner. All work shall be in accordance with applicable federal, state, and local regulations, codes and standards, DOE Orders, and Environment, Safety and Health (ES&H) requirements. The scope of work includes characterization, engineering design, asbestos abatement, equipment removal, deactivation of utilities, and D&D of the structure.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation and an Action Memorandum for a time-critical removal action which will be prepared by DOE-EM. A Waste Handling Plan (WHP) including a Sampling and Analysis Plan (SAP), as well as characterization, preparation of waste profiles, sorting/segregation, and size reduction prior to transportation to an approved disposal site are included in this work scope, as needed. Waste profiles will be developed and submitted to the EMWMF WAC Attainment Team for approval prior to waste disposal at the EMWMF. Scope also includes coordination of waste shipments with the DOE contractor for Environmental Management Waste Management Facility (EMWMF) and Landfill operations, including input to the contractor's Waste Generation Forecast. Some waste may be shipped to an approved off-site facility for treatment and/or disposal. This project scope includes preparation of a Removal Action Report (RmAR) for regulatory approval following completion of all project activities.

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act of 2009. Project Performance will be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

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ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Initiate demolition of Building 9735	6/2010
Complete demolition of Building 9735	9/2010
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete demolition and disposition of Building 9735 according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
Demolition and disposition of Building 9735.	

9206 Filter House D&D Project

Background

Building 9206 is a Hazard Category 2 facility that was used primarily for uranium recovery operations. The filter house is attached to the building, and consists of a number of bag filters used to remove particulate from the gaseous waste produced by the uranium recovery furnace.

Scope

The scope of work for the 9206 Filter House is to complete deactivation and demolition (D&D) of the 9206 Filter House attached to Building 9206. The contractor shall furnish all labor, equipment, materials, and supplies necessary to complete the scope of work in a safe, compliant and efficient manner. All work shall be in accordance with applicable federal, state, and local regulations, codes and standards, DOE Orders, and Environment, Safety and Health (ES&H) requirements. The scope of work for the 9206 Filter House includes updating the safety basis documentation for D&D work, if necessary, characterization, engineering design, asbestos abatement, equipment removal, deactivation of any utilities, waste disposition, and D&D of the structure. D&D of the filter house involves deactivation of the recovery furnace, removal of all materials and equipment including ductwork, baghouse, and the heat exchanger.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation and an Action Memorandum for a time-critical removal action which will be prepared by DOE-EM. A Waste Handling Plan (WHP) including a Sampling and Analysis Plan (SAP), as well as characterization, preparation of waste profiles, sorting/segregation, and size reduction prior to transportation to an approved disposal site are included in this work scope, as needed. Waste profiles will be developed and submitted to the EMWMF WAC Attainment Team for approval prior to waste disposal at the EMWMF. Scope also includes coordination of waste shipments with the DOE contractor for Environmental Management Waste Management Facility (EMWMF) and Landfill operations, including input to the contractor's Waste Generation Forecast. Some waste may be shipped to an approved off-site facility for treatment and/or disposal. This project scope includes preparation of a Removal Action Report (RmAR) for regulatory approval following completion of all project activities.

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act of 2009. Project Performance will be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

PART III—LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

Section J. Attachments

ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Initiate fieldwork beginning with utility isolation for 9206 Filter House	3/2010
Complete removal of 9206 Filter House	9/2011
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete demolition and disposition of 9206 Filter House according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
Demolition and disposition of 9206 Filter House.	

Biology Complex D&D (Buildings 9211, 9220, 9224, And 9769)

Background

The Biology Complex Support Facilities are located in the northeast portion of the Y-12 Site outside of the Property Protection Area. As part of this project, the following facilities in the Biology Complex will be demolished: 9211, 9220, 9224, and 9769. These facilities have a combined total of approximately 136,000t^2. With the exception of 9211 and 9220, the Biology complex is "cold and dark" i.e. and all service utilities are deactivated and air gapped in shutdown status pending deactivation and demolition (D&D). These facilities are currently classified as Standard Industrial. The primary chemical hazards include lead, polychlorinated biphenyls (PCB)s, Freon, oils, perchloric acid, and asbestos. Some facilities are known to have fixed radiological contamination areas inside the facilities. The scope of work for this project includes asbestos abatement, equipment removal as appropriate, deactivation of remaining utilities, and D&D of the facilities to grade level.

The 9211 Bldg. is a 4-story facility measuring approximately 83,500 ft^2 and contains an incinerator on the 4th story. Potential primary chemical hazards include lead, PCBs, Freon, oils, perchloric acid, and asbestos. Limited radiological contamination is present. There is the potential for RCRA contamination from incineration operations. It is assumed that there is no legacy waste in the facility, but due to structural and mold/mildew hazards, the facility has not been entered for several years to validate this assumption.

The 9220 Building, BD Virus Control Laboratory, is a one story concrete block facility with approximately 22,200 ft^2. Built in 1967, it has been used as a biological research facility. It is shutdown pending D&D and has fixed contamination signage at the entry doors. The primary chemical hazards identified include lead, mercury, PCBs, and asbestos.

Building 9224 is a small biological research facility, is approximately 10,100 ft^2, and has similar characteristics as Building 9220. The 9769 Complex is located within the property protected area of the Y-12 Site. It is situated along the southern edge of Bear Creek Road just west of the east Bear Creek security portal. The 9769 Complex comprises approximately 20,100 ft^2. The facility was originally constructed in 1945 and operated until the mid 1950's as a uranium furnace/incinerator for the recovery of uranium. The building has three floors with a portion of the second floor being constructed in the high bay area in 1961 to make the second floor a complete floor. The process equipment was removed in the late 1950's and the second floor mezzanine was constructed in 1961. The facility was used as animal receiving and holding facility from 1960 until 1985 in support of the ORNL animal research during which time the facility added a north annex and completed a third floor lab conversion. From 1985 until 1998 the facility underwent renovations to convert the facility into and analytical laboratory and offices. It operated until 2002, when it became "cold and dark." The only remaining active utilities are the sanitary and storm sewers. The facility is radiologically contaminated with primarily depleted uranium. The source of the contamination originated from the uranium furnace/incinerator process. Contaminants in the soot produced from operations include uranium, mercury and lead. Other chemical concerns

include the potential for Be in one hood located on the second floor and two perchloric acid hoods on the second floor, Pb, and asbestos containing materials.

Scope

The scope of work for the Biology Complex Deactivation and Demolition (D&D) Project is to complete D&D of Buildings 9211, 9220, 9224, and 9769 to grade including disposition of all material/waste. Building 9211 may need to be removed to surrounding soil elevation since the building is constructed on concrete piers with a crawl space under the first floor slab. The first floor slab may become damaged during demolition, necessitating removal. As part of this scope of work the contractor shall furnish all labor, equipment, materials, and supplies necessary to complete the scope of work in a safe, compliant and efficient manner. All work shall be in accordance with applicable federal, state, and local regulations, codes and standards, DOE Orders, and Environment, Safety and Health (ES&H) requirements.

The scope of work for this project includes asbestos abatement, equipment removal, deactivation of utilities as needed, characterization, engineering design, remaining utility isolation, hazardous material abatement, waste disposition and D&D of the facilities to grade level. The structures will be removed to the first floor slab, unless the first slab design is such that it requires removal to facilitate demolition of the balance of the facility.

The project will be performed in accordance with the requirements of the Federal Facility Agreement for the Oak Ridge Reservation and a time-critical \action memorandum which will be prepared by DOE-EM. A Waste Handling Plan (WHP) including a Sampling and Analysis Plan (SAP) for waste destined for disposal at the EMWMF, as well as characterization, preparation of waste profiles, sorting/segregation, and size reduction prior to transportation to an approved disposal site are included in this work scope, as needed. Waste profiles will be developed and submitted to the EMWMF WAC Attainment Team for approval prior to waste disposal at the EMWMF. Scope also includes coordination of waste shipments with the DOE contractor for Environmental Management Waste Management Facility (EMWMF) and Landfill operations, including input to the contractor's Waste Generation Forecast. This project scope includes preparation of a Removal Action Report (RmAR) for regulatory approval following completion of all project activities.

Project reporting will be performed in accordance with the requirements of the American Recovery and Reinvestment Act of 2009. Project Performance will be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

Section A: <u>Contractor Recovery Act Schedule or Milestone Requirements</u>	
Complete project performance baseline, including Waste Generation Forecast, and schedule for obtaining approval for EMWMF shipments	5/31/09
Issue hazardous material abatement subcontract Request for Proposal for Biology Complex	9/2009
Initiate hazardous material abatement – Buildings 9211, 9220, 9224, and 9769	12/2009
Complete demolition of Building 9769	3/2011
Complete demolition of Building s 9211, 9220, 9224	9/2011
Section B: <u>Contractor Recovery Act Performance Outcomes and Measures</u>	
Complete demolition and disposition of Buildings 9211, 9220, 9224, and 9769 according to schedule.	
Section C: <u>Contractor Recovery Act Deliverables</u>	
Demolition and disposition of Buildings 9211, 9220, 9224, and 9769.	

FY2009-2011 Prioritized Project List – Budget Plan

Project reporting will be performed in accordance with the requirements of the ARRA. Project Performance shall be reported using an ANSI/EIA-748-A-1998 certified Earned Value Management System.

FY 2009-2011 Prioritized Project List ***AMERICAN RECOVERY AND REINVESTMENT ACT***				
Project ID	**Project Name**	**Estimated Cost ($K)**	**Description**	**Basis of Estimate**
1.10.01.01.10	Removal of All Legacy Material from 9201-5	112,000/30 months	Prepare the highest risk facility at Y-12 for accelerated D&D by completing all legacy material disposition (estimated at 1.1M cubic feet) from approximately 613,000 square feet of floor space. Facility and legacy material characterization will be performed on process systems, surfaces and stored materials to develop a waste handling plan. Characterization activities will include sample collection, preparation, management, analyses, and data management. This will support waste management in the determination of waste streams and for waste acceptance criteria (WAC) attainment. Wastes that fit into existing or easily modified profiles for the Y-12 Landfill or other applicable waste disposal outlets can be disposed at those outlets prior to the development and approval of the WHP(s). Legacy materials are defined as being easily removable items that involve minimal efforts for removal e.g., unbolting, unplugging, wire cutting, or cold cutting. ARRA funds will be utilized to disposition legacy materials from the entire facility footprint.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.

FY 2009-2011 Prioritized Project List ***AMERICAN RECOVERY AND REINVESTMENT ACT***				
Project ID	**Project Name**	**Estimated Cost ($K)**	**Description**	**Basis of Estimate**
1.10.01.01.20	Removal of Legacy Material from the second floor of 9204-4	20,000/30 months	Complete removal of legacy material from the entire second floor of 9204-4 (84,000 square feet). Facility and legacy material characterization will be performed on process systems, surfaces and stored materials to develop a waste handling plan. Characterization activities will include sample collection, preparation, management, analyses, and data management. This will support waste management in the determination of waste streams and for WAC attainment. Wastes that fit into existing or easily modified profiles for the Y-12 Landfill or other applicable waste disposal outlets can be disposed at those outlets prior to the development and approval of the WHP(s). Legacy materials are defined as being easily removable items that involve minimal efforts for removal e.g., unbolting, unplugging, wire cutting, or cold cutting.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.

FY 2009-2011 Prioritized Project List ***AMERICAN RECOVERY AND REINVESTMENT ACT***				
Project ID	**Project Name**	**Estimated Cost ($K)**	**Description**	**Basis of Estimate**
1.10.01.02.10	Demolition of Buildings 9211, 9220, and 9224	72,000/30 months	Remove any legacy materials, deactivate building utilities, remove equipment and appurtenances, and complete cleanup and demolition of the entire facility to slab. Facility and legacy material characterization will be performed on process systems, surfaces and stored materials to develop a waste handling plan. Characterization activities will include sample collection, preparation, management, analyses, and data management. This will support waste management in the determination of waste streams and for WAC attainment. These buildings are in the old Biology Complex which is slowly collapsing. Building 9211 suffered the collapse of an exterior wall in 2008, and represents a physical threat to workers and a threat of release of hazardous materials to the environment.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.
1.10.01.02.20	D&D of Building 9206 bag filter house and associated recovery furnace	7,000/30 months	The scope of work for the 9206 Filter House includes updating the safety basis documentation for D&D work, readiness activities (as necessary), characterization, engineering design, equipment removal (recovery furnace), deactivation of utilities, waste disposition and D&D of the bag filter house structure.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.

FY 2009-2011 Prioritized Project List ***AMERICAN RECOVERY AND REINVESTMENT ACT***				
Project ID	**Project Name**	**Estimated Cost ($K)**	**Description**	**Basis of Estimate**
1.10.01.02.30	Demolition of Building 9769	8,000/30 months	Remove any legacy materials, deactivate building utilities, remove equipment and appurtenances, and complete cleanup and demolition of the entire facility to slab. Facility and legacy material characterization will be performed on process systems, surfaces and stored materials to develop a waste handling plan. Characterization activities will include sample collection, preparation, management, analyses, and data management. This will support waste management in the determination of waste streams and for WAC attainment.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.
1.10.01.02.40	Demolition of Building 9735	5,000/30 months	The scope of work includes characterization, engineering design, asbestos abatement, equipment removal, deactivation of utilities, and D&D of the structure.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.

FY 2009-2011 Prioritized Project List ***AMERICAN RECOVERY AND REINVESTMENT ACT***				
Project ID	**Project Name**	**Estimated Cost ($K)**	**Description**	**Basis of Estimate**
1.10.01.03.10	Salvage Yard Remediation	35,000/30 months	Complete cleanup of the Y-12 Salvage Yard (7 acres) by removing over 31,000 cubic yards of uncontainerized material and approximately 1,100 containers of material from the Salvage Yard. Material characterization will be performed on stored materials to develop a waste handling plan. Characterization activities will include sample collection, preparation, management, analyses, and data management. This will support waste management in the determination of waste streams and for WAC attainment.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.
1.10.01.03.20	WEMA (Storm Sewer) Remediation	8,000/30 months	Remove and dispose of mercury contaminated sludge. Video-inspect storm sewer pipes to identify damaged segments. Remove sediment from 11,550 linear feet of storm sewers and collect the sediment and rinse water. Reline an estimated 2,650 linear feet of damaged storm sewer, as identified by video inspection. Repair catch basins as needed. Treat and dispose an estimated 600 cubic yards of soil and sediment by low-temperature thermal desorption and/or stabilization and disposal at the Environmental Management Waste Management facility (EMWMF), as appropriate. Treat water at existing on-site treatment facilities prior to discharge.	Developed from a planning estimate with input from resource providers, the customer, and experience of similar, but smaller scale, ongoing projects. The estimate is based on timely start and completion of the work using reasonable contingency with the work-hour estimate.
	Estimated Cost of Expense Projects Funded at Target	267,000/30 months		

3. The other requirements mandated by the American Recovery and Reinvestment Act, which is applicable only to the Recovery Act work, are as follows:

   Subcontracts: To the maximum extent possible, subcontracts funded under this Work Authorization shall be awarded as fixed-price contracts through the use of competitive procedures.

   Definitions: For purposes of this paragraph, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

   Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

   A. FLOW DOWN PROVISION

      The content of items 3A through 3G must be flowed down in every first-tier subcontract for work reimbursed by Recovery Act funds. (In turn, the first-tier is then responsible for flowing it to its subcontractors.)

   B. SEGREGATION AND PAYMENT OF COSTS

      The Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. See clause H.61 for additional guidance.

   C. PROHIBITION ON USE OF FUNDS

      None of the funds provided under this work authorization derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

   D. WAGE RATES

      All laborers and mechanics employed by the Contractor and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See http://www.dol.gov/esa/whd/contracts/dbra.htm.

   E. PUBLICATION

      Information about this work will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may

exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. REGISTRATION REQUIREMENTS

The Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under paragraph J (FAR 52.204-11) below.

G. UTILIZATION OF SMALL BUSINESS

The Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

H. ACCESS

See Paragraph K (FAR 52.215-2).

I. CERTIFICATION

In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.

Note: The following paragraphs, J,K, and L are interim FAR clauses that are only applicable to this Work Authorization. These interim FAR clauses are in effect until the FAR is amended to implement, in final, provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify this Work Authorization to incorporate the final FAR clauses that implement the Recovery Act, and the following paragraphs will no longer be valid, and this Work Authorization will be considered modified to add the final FAR clauses.

J. FAR 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT--REPORTING REQUIREMENTS (MAR 2009)

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

Contract, as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

First-tier subcontract means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

Jobs created means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery

and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Jobs retained means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Total compensation means the cash and noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus*.

(2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans*. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) *Other compensation*. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at http://www.FederalReporting.gov.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if-

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of

the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than $25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under $300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over $25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

2) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of clause)

K. AUDIT AND RECORDS

This FAR clause is applicable only to Recovery Act Work.

FAR 52.215-2 Audit and Records -- Negotiation (Mar 2009) (ALT 1) (Mar 2009)

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

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

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

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

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

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

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

(d) *Comptroller General or Inspector General*.

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

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

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

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

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

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

(g) (1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this *contract*. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

(End of Clause)

L. <u>BUY AMERICAN.</u>

When using funds appropriated under the American Recovery and Reinvestment Act for construction, the following FAR clauses are applicable to the contract under the circumstances cited in the clause.

FAR 52.225-21 is used for Recovery Act funded construction projects under $7,443,000 in accordance with FAR 25.11-2(e) an replaces 52.225-9.

FAR 52.225-22 is to be used for Recovery Act construction projects if 52.225-21 is used in accordance with FAR 25.1102(e) and replaces 52.225-10.

FAR 52.225-23 is to be used for Recovery Act construction projects of $7,443,000 or more in accordance with FAR 25.1102(e) and replaces 52.225-11.

FAR 52.225-24 is to be used for Recovery Act construction projects of $7,443,000 or more if 52.225-23 is used in accordance with FAR 25.1102(e) and replaces 52.225-12.

FAR 52.225-21 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act-- Construction Materials (MAR 2009)

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

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.

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.

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

Manufactured construction material means any construction material that is not unmanufactured construction material.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference*.

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a-10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) 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"]

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

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

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

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act*.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) 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) Cost;

(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)(4) of this clause.

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

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(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 section 1605 of the Recovery Act or 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 cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or 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 Cost Comparison

Construction Material	Unit of Measure	Quantity	Cost Description (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.]

(End of clause)

52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act—Construction Materials (MAR 2009)

(a) *Definitions*. "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-21).

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-21 in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers*.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009]). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-21.

FAR 52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements (MAR 2009)

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

Construction material means an article, material, or supply brought to the construction site by the Contractor or 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.

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.

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

Free trade agreement (FTA) country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

Manufactured construction material means any construction material that is not unmanufactured construction material.

Recovery Act designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

Recovery Act designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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

Unmanufactured construction material means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a-10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements--

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none".]

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

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

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

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(d) (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) 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) Cost;

(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)(4) of this clause.

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

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(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 section 1605 of the Recovery Act or 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 cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(e) *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 Cost Comparison

Construction material	Unit of measure	Quantity	Cost (dollars)* Description
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.]

(End of clause)

Alternate I (MAR 2009). As prescribed in 25.1102(e), add the following definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to

Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225-24 Notice of Required Use Of American Iron, Steel, and Other Manufactured Goods-- Buy American Act--Construction Materials Under Trade Agreements (MAR 2009)

(a) *Definitions*. "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "Recovery Act designated country construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-23).

(b) *Requests for determination of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23 in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers*.

(1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability*. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23.

Alternate II (MAR 2009). As prescribed in 25.1102(e), add the definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers*.

(1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of

equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate *14633 offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

M. WHISTLEBLOWER PROTECTION.

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

N. BASELINE AND REPORTING REQUIREMENTS FOR WORK PERFORMED UNDER THE RECOVERY ACT

This paragraph defines the unique requirements for the Contractor's project management baseline and associated reporting requirements to address the contract performance requirements to be performed as identified within this Work Authorization which are funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

(a) Baseline Requirements

(1) For purposes of this paragraph, the "pre-definitized period" is defined as that timeframe from the date of issuance of the Modification M183/Undefinitized Work Authorization Directive directing the contractor to begin the Recovery Act work until the work is definitized and the update has been executed by both the Contractor and Contracting Officer. All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period of 120 days after issuance of the Undefinitized Work Authorization or expenditure of 30% of the estimated value, *whichever comes first*.

(*The pre-definitized period is sequenced with specific deliverables and actions each 30 days. These deliverables and actions may occur in less than 30 days based on the project size, scope, and level of confidence in current NTB/OPER, but no more than 30 day periods.)*

(2) During the pre-definitized period, the Contractor shall develop and deliver to the Contracting Officer the following:

(i) Within 30 days after issuance of Modification Work Authorization Directive Number 1.10.01, attached to the Contract Modification M183, the Contractor shall provide a work plan for performance of that portion of the work specified in the Summary Statements of Work (of this Work Authorization Directive) covering the Statement of Work and specific milestones, deliverables, and performance measures/expectations scheduled to be performed during the 180-day period after issuance of Work Authorization Number 1/10/01. This plan shall include the following:

(A) Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the Statement of Work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;

(B) Monthly spend plan consistent with the Summary Statements of Work included in the Work Authorization Directive, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the Statement of Work;

(C) Crosswalk of Statement of Work WBS elements and associated planned milestones, metrics, and estimated costs (at the 80% confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;

(D) Milestone list including, but not limited to, major hiring actions that create newly “created” or “retained” jobs by the Contractor or first tier subcontractors in accordance with paragraph J (a). of this Work Authorization Directive, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and

(E) Planned quarterly summary of jobs “created” or “retained” by the Contractor and first tier subcontractors as defined in paragraph J(a) of this Work Authorization.

(ii) Within 120 days after issuance of Work Authorization Directive Number 1.10.01, the Contractor shall propose a Performance Baseline for the complete work specified in Paragraph C. Statement of Work. This baseline shall use control accounts that will be made up of work packages. The WBS elements at

the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:

(A) The Contractor shall propose a performance baseline, at a high confidence level, for the work to be performed, including the pre-definitized period and the post-definitzed period. This baseline shall be based upon the work and schedule included in Work Authorization Directive Number 1.10.01 and the Contractor's cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include all of the work by WBS, including both the pre- and post- definitized periods, and the Contractor's defined management reserve. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the Contractor's proposed estimated cost for the Recovery Act work. This performance baseline is subject to independent project review and certification before approval by the Government.

(B) A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.

(C) The proposed Performance Baseline shall also include the planned quarterly summary of jobs "created" or "retained" by the Contractor and first tier subcontractors as defined in paragraph J(a) of this Work Authorization.

Deliverables supporting the Recovery Act performance baseline shall include all deliverables required under existing contract requirements, those Recovery Act deliverable and reporting requirements specified in this Work Authorization, *and those Recovery Act-unique deliverables listed below*. For all common deliverables, the data shall be clearly segregated and distinguished between non-Recovery Act work and Recovery Act work, as well as summing to complete contract totals.

1) Work breakdown structure and associated dictionary;

2) List of planning basis and assumptions;

3) Cost baseline description document that includes the basis of cost estimate;

4) Schedule baseline that employs a critical path method and is resources loaded such that earned value can be measured;

**5) Organizational breakdown structure;*

**6) Responsibility assignment matrix that identifies Control Account Managers;*

**7) Earned value management system description and a copy of the letter of certification against ANSI/EIA-748-B, "Earned Value Management Systems;"*

**8) Project controls system description document;*

**9) Risk management plan with results of qualitative and quantitative analysis including S-curves, cost and schedule contingency determinations, risk mitigation/risk response plans, and risk register;*

**10) All work packages;*

**11) Technical design documentation;*

**12) Documented safety analysis;*

**13) Safety evaluation report (if required);*

**14) Safety design strategy;*

**15) Integrated safety management system description document and latest annual certification.*

*Note: These are required program elements subject to on-site review as part of a baseline review and approval, and must be made available upon request

These documents shall be submitted to the Contracting Officer to support DOE review and baseline approval. The Contracting Officer may identify other documents as needed to support project reviews and audits.

The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted.

(3) During the pre-definitized period, the Contractor shall determine the budgeted cost of work performed (BCWS)/earned value (EV) for budgeted cost for work performed (BCWP)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the Contractor's progress in accordance with the reporting requirements specified in paragraph F.12 of this Work Authorization. The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.

(4) Upon negotiation and execution of the Definitized Work Authorization Modification, the performance baseline documentation submitted in accordance with paragraph b.2

above shall be revised by the Contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the Definitized Work Authorization Modification.

(b) Reporting Requirements

(1) Within 30 days of definitization of the Recovery Act work, the Contractor shall begin reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in this Work Authorization, and those Recovery Act-unique deliverables listed below. Performance against the Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.

(2) These reports shall be provided to the Contracting Officer on a monthly basis.

(i) Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05): Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.

(ii) A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.

A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated *to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.*

(End of clause)

ATTACHMENT G - WORK AUTHORIZATION DIRECTIVE (WAD)

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ATTACHMENT H – SCHEDULE OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS TARGETS AND IDENTIFIED FIRMS

Attached are the Small Business and Small Disadvantaged Business Participation Targets, B&W Y-12 Offer, Page J-1

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Attachment H – Schedule of Small Business and Small Disadvantaged Business Targets and Identified Firms

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ATTACHMENT I – BILATERAL AND MULTILATERAL AGREEMENTS

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Argentina	64	5/29/1996	5/29/2006	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the National Atomic Energy Commission of the Argentine Republic for Technical Exchange and Cooperation in the Area of Radioactive and Mixed Waste Management	Radioactive and Mixed Waste Management	Environmental Restoration and Waste Management	National Atomic Energy Commission
Australia	667	11/10/2003	11/10/2008	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Department of Industry, Tourism and Resources of the Commonwealth of Australia on Cooperation in the Energy Sector	Cooperation in the Energy Sector		Department of Industry, Tourism and Resources of the Commonwealth of Austrailia
Australia	509	9/15/1998	9/14/2008	Primary DOE	Arrangement between the United States Department of Energy and the Australian Safeguards and Nonproliferation Office Concerning Research and Development in Nuclear material Control Accountancy, Verification, Physical Protection, Advance Containment and Surveillance Technologies for International Safeguards	Safeguards Arrangement	Arms Control and Nonproliferation	Australian Safeguards and Nonproliferation Office

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Brazil	655	6/20/2003	6/20/2008	Primary DOE	Agreement between the Department of Energy of the United States of America nd the Ministry of Science and Technology of the Federative Republic of Brazil Concerning Cooperation in Nuclear Energy	Cooperation in Nuclear Energy	Science and Technology	Ministry of Science and Technology of the Federative Republic of Brazil
Brazil	651	9/17/2001	9/17/2006	Secondary DOE	Agreement to Extend the Agreement between the Department of Energy of the United States and the National Nuclear Energy Commission of Brazil Concerning Research and Development in Nuclear Material Control, Accountancy, Verification, Physical Protection, and Advanced Containment and Surveillance Technologies for International Safeguards Applications	Extension - Agreement bet. DOE and the National Nuclear Energy Commission	Arms Control and Nonproliferation	National Nuclear Energy Commission of Brazil
Canada	81	3/18/1998	3/18/2008	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Department of Natural Resources of Canada on Collaboration in Energy Research and Development	Energy R&D	Energy Research and Development	Department of Natural Resources

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Canada	702	4/28/2005	9/28/2009	Amendment	Amendment to Project Annex I - Weyburn CO2 Sequestration Project Under the Implementing Agreement Between The Department of Energy of the United States of America and The Department of Natural Resources Canada for Cooperation in the Area of Fossil Fuels		Fossil Energy	Department of Natural Resources
Canada	656	6/17/2003	6/17/2008	Primary DOE	Implementing Arrangement between the United States Department of Energy and the Department of Natural Resources of Canada and Atomic Energy of Canada Limited for Collaboration in the area of Nuclear Energy Research	Nuclear Energy Research	Nuclear Energy	Department of Natural Resources
Canada	646	9/11/2002	9/11/2007	Tertiary DOE	Project Annex I - Weyburn CO2 Sequestration Project under the Implementing Arrangement Between the Department of Energy of the United States of America and the Department of Natural Resources Canada for Cooperation in the Area of Fossil Fuels	Project Annex I - Weyburn CO2 Sequestration Project	Fossil Energy	Department of Natural Resources

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Canada	614	10/22/2001	10/22/2006	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Department of Natural Resrouces Canada for Cooperation in the areas of Microgeneration and Community Energy Systems	Arrangement between DOE and Dept. of Natural Resources Canada	Energy Efficiency and Renewable Energy	Department of Natural Resources
China	621	2/12/2002	2/12/2007	Secondary DOE	Agreement to Extend Annex II to the Protocol for Cooperation in the Fields of Energy Efficiency and Renewable Energy Technology Development and Utilization for Cooperative Activities in Wind Development in China between the Department of Energy of the United States of America and the State Power Corporation of China	Annex II - The State Power Corporation of China	Energy Efficiency and Renewable Energy	State Power Corporation of China
China	674	1/12/2004	1/12/2009	Primary DOE	Statement of Intent Between the Departmentof Energy of the United States of America and the China Atomic Energy Authority of the Peoples's Republic of China Concerning Cooperation in the Field of Peaceful Use of Nuclear Energy and Nuclear Non-Proliferation and Counter-Terrorism	Statement of Intent between DOE and China	Science and Technology	China Atomic Energy Authority of the People's Republic of China

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
China	622	2/12/2002	2/12/2007	Secondary DOE	Agreement to Extend and Amend Annex III to the Protocol for Cooperation in the Fields of Energy Efficiency and Renewable Energy Technology Development and Utilization for Cooperative Activities in Energy Efficiency between The Department of Energy of the United States of America and the State Planning Commission of the People's Republic of China	Annex III - State Planning Commission	Energy Efficiency and Renewable Energy	State Science and Technology Commission
China	623	2/12/2002	2/12/2007	Secondary DOE	Agreement to Extend and Amend Annex IV to the Protocol for Cooperation in the Fields of Energy Efficiency and Renewable Energy Technology Development and Utilization for Cooperative Activities in Renewable Energy Business Development between the Department of Energy of the United States of America and the State Economic and Trade Commission of the People's Republic of China	Annex IV - State Economic and Trade Commission	Energy Efficiency and Renewable Energy	State Economic and Trade Commission
China	672	1/12/2004	1/12/2010	Primary DOE	Protocol for Cooperation in Clean Energy Technologies for the 2008 Summer Olympic Games in Beijing	Protocol Agreement - Summer Olympic Games in Beijing	Energy Efficiency and Renewable Energy	Ministry of Science and Technology

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
China	684	5/23/2004	5/23/2009	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the National Development and Reform Commission of the People's Republic of China on Bilateral Energy Policy Dialogue	MOU bet. DOE and Republic of China on Bilateral Energy	*Other	The National Development and Reform Commission of the People's Republic of China
China	699	4/20/2005	4/20/2010	Extension	Agreement to Extend the Protocol for Cooperation in the Field of Fossil Energy Technology Development and Utilization between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China	Extension for agreement bet. DOE and MOST		Ministry of Science and Technology
China	649	11/19/2002	11/19/2007	Secondary DOE	Annex II to the Protocol on Cooperation in the Field of Fossil Energy Technology Development and Utilization between The Department of Energy of the United States of America and The Ministry of Science and Technology of the People's Republic of China for Cooperation in the Area of Clean Fuels	Annex II - Cooperation in the area of Clean Fuels	Fossil Energy	State Development Planning Commission of the People's Republic of China

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China	666	10/29/2003	10/29/2008	Primary DOE	The Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China for Cooperation in the Field of Energy Efficiency and Renewable Energy Technology Development and Utilization - Annex V Development of Electric-Drive and Fuel Cell Vehicle Technologies	Annex V - Development of Electric-Drive and Fuel Cell Vehicle Technologies		Ministry of Science and Technology
Equatorial Guinea	691	8/6/2004	8/6/2009	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Mines, Industry and Energy of the Republic of Equatorial Guinea for Cooperation on Energy Policy, Science and Technology, and Energy Technology Demonstration	MOU bet. DOE and Equatorial Guinea	Science and Technology	Ministry of Mines, Industry and Energy of the Republic of Equatorial Guinea
European Atomic Energy Community (EURATOM)	661	4/6/2003	4/6/2008	Primary DOE	Agreement for Cooperation between the European Atomic Energy Community represented by the Commission of the European Communities and the Department of Energy of the United States of America in the Field of Fusion Energy Research and Development	Fusion Energy Research and Development	Energy Research and Development	European Atomic Energy Community

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European Atomic Energy Community (EURATOM)	612	5/14/2001	5/14/2006	Primary DOE	Agreement for Cooperation between the European Atomic Energy Community Represented by the Commission of the European Communities and the Department of Energy of the United States of America in the Field of Fusion Energy Research and Development	Fusion Agreement between EURATOM and DOE	Fusion Energy	European Atomic Energy Community
European Atomic Energy Community (EURATOM)	664	3/6/2003	3/6/2008	Primary DOE	Technical Exchange and Cooperation Arrangement between the Department of Energy of the United States of America and the European Atomic Energy Community as Represented by the Commission of the European Communities in the Field of Nuclear-Related Technology Research and Development	Techncial Exchange and Cooperation Arrangement		European Atomic Energy Community
European Union	648	5/14/2001	5/14/2006	Primary DOE	Implementing Agreement between the Department of Energy of the United States of America and the European Commission for Non-Nuclear Energy Scientific and Technological Co-operation	Non-Nuclear Energy S&T Agreement	Science and Technology	European Commission

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European Union	660	6/17/2003	6/17/2008	Amendment	Amendment to the Implementing Agreement between the Department of Energy of the United States of America and the European Commission, for Non-nuclear Energy Scientific and Technological Cooperation relating to Cooperation in the Area of Fuel Cells	Amendment relating to Cooperation in the area of Fuel Cells		European Commission
Finland	689	11/24/2003	11/24/2008	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and Posiva Oy Concerning a Cooperative Program in the field of Radioactive Waste Management	MOU between DOE and Posiva Oy	Civilian Radioactive Waste Management	Posiva Oy
France	635	7/9/2001	7/9/2006	Secondary DOE	Implementing Arrangement No. 1 under the Agreement between the Department of Energy of the United States of America and Commissariat A L'Energie Atomique of France for Cooperation in Advanced Nuclear Reactor Science and Technology	Advanced Nuclear Reactor Science and Technology (I-NERI)	Nuclear Energy	Commissariat a l'Energie Atomique (CEA)

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France	698	4/4/2005	4/4/2009	Primary DOE	Agreement between the Department of Energy of the United States of America and the Centre National de la Recherche Scientifique of France for Cooperation in Basic Scientific Research and Development	Agreement bet. DOE and France		The Centre National de la Recherche Scientifique of France
France	650	5/23/2002	5/23/2007	Primary DOE	Agreement between the Department of Energy of the United States of America and the Commissariat A L'Energie Atomique of France in the field of Radioactive Waste Management	Radioactive Waste Management Agreement	Civilian Radioactive Waste Management	Commissariat a l'Energie Atomique (CEA)
France	631	3/13/2002	3/13/2007	Primary DOE	Agreement between the Department of Energy of the United States of America and the Commissariat A' L'E'nergie Atomique of France Concerning Cooperation in Fundamental Science Supporting Stockpile Stewardship	Fundamental Science on Stockpile Stewardship	Fundamental Science	Commissariat a l'Energie Atomique (CEA)
France	630	3/13/2002	3/12/2007	Primary DOE	Agreement between the Department of Energy of the United States of America and the Commissariat A' L'E'nergie Atomique of France Concerning Cooperation in Computer Sciences	Computer Sciences	Computer Sciences	Commissariat a l'Energie Atomique (CEA)

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France	629	1/2/2002	1/2/2007	Statement of Intent	Statement of Intent Between the Department of Energy of the United States of America and the Commissariat A' L'Energie Atomique of France Concerning Exchange of Information on Research in Life Sciences	SOI between DOE and France	Exchange of Information on Research in Life Sciences	Commissariat a l'Energie Atomique (CEA)
France	692	8/24/2004	8/24/2010	Primary DOE	Implementing Arrangement Concerning Irradiation of Eight Pins in the Phenix Reactor under the Agreement between the Department of Energy of the United States of America and The Commissariat a' l'Energie Atomique of France for Cooperation in Advanced Nuclear Reactor Science and Technology	DOE/CEA FUTURIX Agreement	Nuclear Energy	Commissariat a l'Energie Atomique (CEA)
Germany	681	11/1/2002	11/1/2007	Primary DOE	Memorandum of Understanding between the Deutsches Elektronen-Synchrotron DESY and the Stanford Linear Accelerator Center (SLAC) Establishing a Collaborative Research Effort to Enable the Exploitation and Expansion of the Scientific Capabilities of the Linac Coherent Light Source and the TESLA X-Ray Free-electron Laser	MOU bet. DESY AND SLAC		DESY and Stanford Linear Accelerator Center (SLAC)

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Germany	613	7/24/2001	7/24/2006	Primary DOE	Implementing Agreement between the Federal Ministry of Education and Research of the Federal Republic of Germany and the Department of Energy of the United States of America on Collaboration in the Field of Dense Plasma Physics	Agreement between DOE and Germany on Dense Plasma Physics	Science and Technology	Ministry of Education and Research of the Federal Republic of Germany
India	663	9/12/2003	9/12/2008	Primary DOE	Memorandum of Understanding between the Ministry of Coal of the Republic of India and the Department of Energy of the United States of America Concerning Energy Consultations and Information Exchange.	India - Energy Consultations and Information Exchange	Fossil Energy	The Ministry of Coal of the Republic of India
Indonesia	694	11/9/2004	11/9/2009	Primary DOE	Arrangement between the Department of Energy of the United States of America and the Nuclear Regulatory Agency of the Republic of Indonesia for Cooperation in Nuclear Material Security and Safeguards Technologies	Nuclear Material Security and Safeguards Technologies		The Nuclear Regulatory Agency of the Republic of Indonesia

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Iraq	695	12/20/2004	12/20/2009	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and Ministry of Oil of the Republic of Iraq for Cooperation on Energy Analysis, Science and Technology, and Energy Technology Demonstration	MOU bet. DOE and Republic of Iraq	Science and Technology	The Ministry of Oil the Republic of Iraq
Israel	617	10/23/2001	10/23/2006	Primary DOE	Implementation Agreement 3 between the Department of Energy of the United States of America and the Ministry of National Infrastructure of the State of Israel for Cooperation in the Field of High Temperature Superconductivity	Cooperation in the Field of High Temperature Superconductivity	Energy Efficiency and Renewable Energy	Ministry of Energy and Infrastructure
Italy	346	3/24/1998	3/24/2008	Secondary DOE	Annex V to the Agreement between the Department of Energy of the United States of America and the Ministry of Industry, Commerce and Handicraft of the Republic of Italy in the Field of Energy Research and Development for Cooperation in the Field of Biomas Energy	Annex 5 - Biomass Energy	Energy Efficiency and Renewable Energy	Ministry of Industry, Commerce and Handicraft of the Republic of Italy (MICA)

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Italy	347	3/24/1998	3/24/2008	Secondary DOE	Annex VI to the Agreement between the Department of Energy of the United States of America and the Ministry of Industry, Commerce and Handicraft of the Republic of Italy in the Field of Energy Research and Development for Cooperation in the Field of Photovoltaic Technology	Annex 6 - Photovoltaic Technology	Energy Efficiency and Renewable Energy	Ministry of Industry, Commerce and Handicraft of the Republic of Italy (MICA)
Italy	703	5/17/2005	5/17/2010	Secondary DOE	Annex VIII to the Agreement between the Department of Energy of the United States of America and the Ministry of Environment of the Republic of Italy in the Field of Energy and Related Environmental Sciences	Annex VIII		Ministry of Environment of the Republic of Italy
Japan	602	1/17/2001	7/19/2007	Secondary DOE	Amendment 4 of Annex I to the DOE - Monbusho Exchange of Letters on Cooperation in Fusion Research and Development	Amedment 4 - Annex 1 Fusion Research and Development	Fusion Energy	The Ministry of Education, Science and Culture of Japan (Monbusho)
Japan	653	3/19/2003	3/19/2008	Primary DOE	Agreement between the Department of Energy of the United States of America and the Japan Nuclear Cycle Development Institute in the Field of Radioactive Waste Management	Radioactive Waste Management	Civilian Radioactive Waste Management	Japan Nuclear Cycle Development Institute

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Japan	669	1/8/2004	1/8/2008	Statement of Intent	Joint Statement of Intent between the Ministry of Economy, Trade and Industry of Japan and the Department of Energy of the United States of America concerning Scientific and Technological Cooperation in the Area of Hydrogen and Fuel Cells	Joint SOI bet. DOE and the Ministry of Economy, Trade and Industry of Japan	Science and Technology	Ministry of Economy Trade and Industry of Japan
Japan	682	3/29/2004	3/29/2009	Secondary DOE	Amendment IV to the Annex I to the Implementing Arrangement between the United States Department of Energy and the Japan Atomic Energy Research Institute on Cooperation in Fusion Research and Development U.S./Japan Collaborative Testing of First Wall and Blanket Structural Materials with Mixed Spectrum Fission Reactors	Amendment IV of Annex I		Japan Atomic Energy Research Institute
Japan	687	6/10/2004	6/10/2009	Secondary DOE	Annex 1 to the Implementing Arrangement between the Department of Energy of the United States of America and the Agency of Natural Resources and Energy of Japan Concerning Cooperation in the Joint Nuclear Energy Research Initiative On advanced Nuclear Technologies	Annex - 1 bet. DOE and ANRE of Japan	Nuclear Energy	Agency of Natural Resources and Energy (ANRE)

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Japan	693	8/20/2004	8/20/2009	Primary DOE	Amendment VI to the Agreement between the Japan Atomic Energy Research Institute and the United States Department of Energy on Cooperation in Doublet III Project		Science and Technology	Japan Atomic Energy Research Institute
Japan	700	1/19/2005	1/19/2010	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Education, Culture, Sports, Science and Technology of Japan concerning Cooperation in the Field of Research and Development of Innovative Nuclear	Implementing Arrangement bet. DOE and (MEXT)of Japan	Nuclear Energy	Ministry of Education, Culture, Sports, Science and Technology of Japan
Japan	704	7/6/2004	7/6/2009	Extension	Extension of Specific Memorandum of Agreement Between the Department of Energy of the United States of America and Japan Atomic Energy Research Institute on Decontamination and Decommissioning of Nuclear Facilities	Extension - MOA bet. DOE and JAERI	Environmental Management	Japan Atomic Energy Research Institute

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Japan	481	6/9/1997	6/9/2007	Secondary DOE	Specific Memorandum of Agreement Between the Japan Atomic Energy Research Institute and the Department of Energy of the United States of America Concerning Research and Development in Nuclear Material Control, Accountancy, Verification and Physical Protection	SMA - Safeguards	Arms Control and Nonproliferation	Japan Atomic Energy Research Institute
Korea, Republic of	626	6/14/2001	6/14/2006	Secondary DOE	Agreement to Extend the Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for Cooperation in the Area of Fusion Energy Research and Related Fields	Extension on the Implementing Arrangement between DOE and Korea	Fusion Energy	Ministry of Science and Technology
Korea, Republic of	639	9/17/2002	9/17/2007	Primary DOE	Arrangement between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea Concerning Research and Development in Nuclear Material Control, Accountancy, Verification, Physical Protection, and Advanced Containment and Surveillance Technologies for International Safeguards Applications	Safeguards Agreement	Science and Technology	Ministry of Science and Technology

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Korea, Republic of	644	6/14/2001	6/14/2006	Secondary DOE	Agreement to Extend and Amend the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship	Extend and Amend MOU bet. DOE and MOST	Science and Technology	Ministry of Science and Technology
Korea, Republic of	665	9/15/2003	9/15/2008	Secondary DOE	Annex VI to the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship On a Collaborative Project Supporting Research and Development in the Field of Innovative Fuel Cycles	Annex VI - Innovative Fuel Cycles	Science and Technology	Ministry of Science and Technology
Korea, Republic of	608	5/16/2001	5/16/2006	Secondary DOE	Annex V to the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship on a Collaboration Project Supporting the International Nuclear Energy Research Initiative (INERI)	Annex V - MOU between DOE and Ministry of Science and Technology of the Republic of Korea on I-NERI	Nuclear Energy	Ministry of Science and Technology

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Mexico	610	5/7/2001	5/7/2006	Secondary DOE	Extension of the Agreement for Energy Cooperation between the Deparment of Energy of the United States of America and the Secretariat of Energy of the United Mexican States, and its Four Annexes		Science and Technology	Mexico Secretary of Energy
Morocco	647	6/3/2002	6/3/2007	Secondary DOE	Project Annex 2 to the Agreement between the Department of Energy of the United States of America and the Ministry of Industry, Commerce, Energy and Mines of the Kingdom of Morocco Concerning Cooperation in Clean Energy Technologies	Project Annex 2 - Clean Energy Technologies	Energy Efficiency and Renewable Energy	The Ministry of Industry, Commerce, Energy and Mines of the Kingdom of Morocco
Norway	683	5/23/2004	5/23/2009	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Royal Ministry of Petroleum and Energy of the Kingdom of Norway on Collaboration in the Field of Energy Research, Development and Demonstration	MOU bet. DOE and Ministry of Petroleum and Energy	*Other	Ministry of Petroleum and Energy

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Peru	645	8/14/2001	8/14/2006	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Republic of Peru on Cooperation in the Field of Energy	MOU - Cooperation in the Field of Energy	Science and Technology	Ministry of Energy and Mines of the Republic of Peru
Philippines	671	1/13/2004	1/13/2009	Primary DOE	Memorandum of Understanding among the Philippine Department of Energy, the United States Department of Energy, and the United States Agency for International Development for the Sustainable Energy Development Program	MOU among PDOE, DOE and USAID		Philippine Department of Energy (PDOE)
Russian Federation	675	3/17/2004	3/17/2007	Primary DOE	Appendix L Under Implementing Arrangement #1 of the Memorandum of Understanding Between the U.S. Department of Energy and Russian Academy of Sciences on Coopeation in Science and Technology	Appendix L	Science and Technology	The Russian Academy of Sciences

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Russian Federation	668	12/2/2003	12/2/2008	Extension	Agreement between the Department of Energy of the United States of America and the Russian Academy of Sciences to Extend the "Memorandum of Understanding between the Department of Energy of the United States of America and the Russian Academy of Sciences	Extension of the MOU bet. DOE and RAS signed March 24, 1999	Science and Technology	Russian Academy of Sciences
Russian Federation	659	7/16/2001	7/16/2006	Secondary DOE	Annex VI to the Memorandum of Agreement between the Department of the United States of America and the International Science and Technology Center in the Russian Federation Concerning Implementation of Projects of the Office of Civilian Radioactive Waste	Annex VI	Civilian Radioactive Waste Management	International Science and Technology Center in the Russian Federation
South Africa	20	12/4/1997	12/4/2022	Inter-governmental	Agreement for Cooperation between the United States of America and the Republic of South Africa Concerning Peaceful Uses of Nuclear Energy	Peaceful Uses of Nuclear Energy	Nuclear Energy	Republic of South Africa
Spain	596	7/15/2000	7/15/2006	Primary DOE	Memorandum of Understanding Between The Ministry of Science and Technology of the Kingdom of Spain and The Department of Energy of the United States of America Concerning Cooperation in Energy	MOU for Energy Cooperation	Energy Research and Development	Ministry of Science and Technology

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Spain	307	9/15/1997	9/15/2007	Secondary DOE	Project Annex 1 - cooperation on research in radiological evaluations	Annex 1	Environmental Safety Health	Ministry of Industry and Energy of the Kingdom of Spain
Spain	100	9/15/1997	9/15/2007	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Industry and Energy of the Kingdom of Spain on Cooperation in Research on Radiological Evaluations	Research on Radiological Evaluations	Environmental Safety Health	Ministry of Industry and Energy of the Kingdom of Spain
Sweden	685	5/24/2004	5/24/2009	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Swedish Nuclear Fuel and Waste Management Company Concerning a Cooperative Program in the Field of Radioactive Waste Management	MOU bet. DOE and the Swedish - Radioactive Waste Material	Civilian Radioactive Waste Management	Swedish Nuclear Fuel and Waste Management Company
Turkey	624	3/20/2002	3/20/2007	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Energy and Natural Resources of the Republic of Turkey for Cooperation in Energy Technology	Cooperation in Energy Technology	Science and Technology	Ministry of Energy and Natural Resources

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
Ukraine	510	5/6/1998	5/4/2028	Intergovernmental	Agreement for Cooperation between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy	US-Ukraine PNC	Nuclear Energy	Government of Ukraine
United Kingdom	638	7/3/2002	7/3/2007	Primary DOE	Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Research and Development of Weapons Detection and Protection-Related Technologies	Gov't to Gov't agreement between US and Great Britain	Science and Technology	Department of Energy of the United Kingdom of Great Britain and Northern Ireland
United Kingdom	611	9/17/2001	9/17/2006	Primary DOE	Memorandum of Understanding between the Department of Energy of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland Concerning the Development and Implementation of Nuclear Verification Technologies	MOU between DOE and the Department of Trade and Industry of the United Kingdom	Nuclear Verification Technologies	Department of Energy of the United Kingdom of Great Britain and Northern Ireland

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
United Kingdom	598	11/6/2000	11/6/2010	Primary DOE	Memoruandum of Understanding Between The Department of Energy of the United States of America and The Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland on Collaboration in Energy Research and Development	MOU on Energy Research and Development	Energy Research and Development	Department of Energy of the United Kingdom of Great Britain and Northern Ireland
United Kingdom	637	7/25/2002	7/25/2007	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Research and Development of Chemical and Biological Weapons Detection and Protection-Related Technologies	Implementing Agreement between DOE and Great Britain	Science and Technology	Department of Energy of the United Kingdom of Great Britain and Northern Ireland
United Kingdom	652	3/10/2003	3/10/2008	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland to Cooperate in the Field of Fossil Energy Technology	Cooperation in the Field of Fossil Energy Technology	Fossil Energy	Secretary of State for Trade and Industry

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Country	ID	Start Date	End Date	Agreement Type	Title	Description	Subject	Foreign Party
United Kingdom	673	3/10/2004	3/10/2009	Primary DOE	Implementing Arrangement between the Department of Energy of the United States of America and the United Kingdom Atomic Energy Authority for Exchange of Nuclear Reactor Technology Information Under the Memorandum of Understanding on Energy R&D between the Department of Energy of the United States of America and the Department of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland	AEA Technology plc	Environmental Management	Atomic Energy Authority of the United Kingdom of Great Britain and Northern Ireland
Venezuela	443	7/10/1980	10/13/2002	Secondary DOE	Project Annex I between the Department of Energy of the United States of America and the Ministry of Energy and Mines of Venezuela for the Joint Characterization of Heavy Crude Oils	Project Annex 1 - Crude Characterization	Fossil Energy	Ministry of Energy and Mines
Venezuela	633	8/9/2001	8/9/2006	Secondary DOE	Project Annex No. XVIII to the Agreement for Energy Cooperation between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Bolivarian Republic of Venezuela in the area of Natural Gas Technologies	Project Annex No. XVIII - Natural Gas Technologies	Fossil Energy	Ministry of Energy and Mines

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ID/File #	Title	Start Date	End Date	Status	Subject	Brief Description
10003	Implementing Agreement for the Establishment of a Project on Energy Conservation in Buildings and Community Systems	3/16/1977	6/30/2012	In Force	Energy Efficiency and Renewable Energy	IEA - Buildings and Community Systems
10041	International Co-operation Agreement between the European Organization for Nuclear Research (CERN) and the Department of Energy of the United States of America and the National Science Foundation of the United States of America Concerning Scientific and Technical Co-operation on large Hadron Collider Activities	12/8/1997	12/8/2017	In Force	Science and Technology	CERN - LHC Agreement
10042	Charter for the Carbon Sequestration Leadership Forum (CSLF) a Carbon Capture and Storage Technology Initiative	6/25/2003	6/25/2013	In Force	*Other	Carbon Sequestration Leadership Forum (CSLF)