

SOLICITATION, OFFER AND AWARD		THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF PAGES 1
2. CONTRACT NUMBER DE-AC05-000R228	3. SOLICITATION NUMBER DE-RP05-000R22800	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 3/21/00	6. REQUISITION/PURCHASE NO. N/A
7. ISSUED BY 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 Ballard A. Jackson Jr.	B. TELEPHONE NO. (NO COLLECT CALLS) (865) 2411646	C. E-MAIL ADDRESS jacksonba@oro.doe.gov
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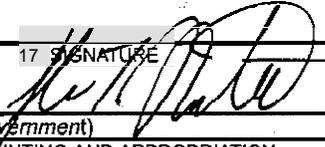
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16; Minimum Bid Acceptance Period.

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
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15B. TELEPHONE NO. (Include area code) 483-6226	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER S.C. ADDRESS IN SCHEDULE.	17. SIGNATURE 	18. OFFER DATE May 8, 2000
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
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22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253 (c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) < ITEM
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24. ADMINISTERED BY (If other than Item 7) CODE	25. PAYMENT WILL BE MADE BY CODE
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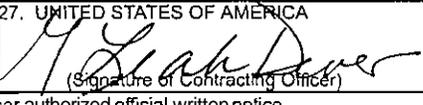
26. NAME OF CONTRACTING OFFICER (Type or print) G. Leah Dever Manager, NNSA, ORO.	27. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	28. AWARD DATE 8/31/00
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PART I
THE SCHEDULE

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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 Plant, 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 transition period (effective date of the contract through September 30, 2000) 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).

(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.
- (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 and Measurement Plan (PEMP), 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 versus performance-based incentives will be determined for each period during the negotiation of the requirements in the PEMP. 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) Pursuant to the Section H clause entitled "Work Authorization System" and the approved FY 2001 budget, the Work Authorization Directives (WADS) for the period October 1, 2000, through September 30, 2001. are set forth below:

<u>WADS</u>	<u>Budget of Estimated Costs</u>
001 - TBD	\$TBD
002 - TBD	TBD
003 - TBD	TBD
00n - TBD	TBD
Total Budget of Estimated Costs \$TBD	

- (6) The Available Fees for the specified Contract periods are set forth below:

<u>Contract Periods</u>	<u>Available Fee</u>
October 1, 2000, through September 30, 2001	
Award Fee	\$TBD
Performance-Based Incentives	<u>\$TBD</u>
Total	\$TBD

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

8.3 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.

8.4 OBLIGATION OF FUNDS

Pursuant to the Section I Clause entitled "Obligation of Funds." the total amount obligated by the Government with respect to this Contract is \$_____ (TBD).

**PART I
THE SCHEDULE**

**SECTION C
DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES**

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SECTION C
DESCRIPTION/SPECIFICATION/WORK STATEMENT
DESCRIPTION OF WORK AND SERVICES

STATEMENT OF WORK

C.1 GENERAL INFORMATION

1.0 Introduction

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

2.0 Background

The **Y-12 Plant** 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 **811** 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 Plant** 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 Plant** 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.

3.0 Scope of Work

The Scope of Work under this management and operating Contract is comprehensive in that the purpose of the Contract is to **perform** all necessary **operational** functions as well as **management functions to manage a major industrial facility and perform the strategic 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:

- Successfully restart enriched uranium operations in accordance with established schedule, technical scope and budget.
- Assure a safe, secure and reliable nuclear weapons stockpile through stockpile evaluation.

maintenance, quality evaluation, enhanced surveillance capabilities and management of retired weapons.

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 HEU material.

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

Demonstrate a culture of continuous improvement for plant 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;

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;

- Improve integration, partnering, and support among the NWC Contractors to promote early on-site problem solving and assist in NWC site issues, consolidation of business elements, and cost efficiencies;
- Develop and deploy effective, visionary strategic planning which is in alignment with the Department's missions and goals, and factors in changing budgets and technical and regulatory requirements;
- Through effective human resource management of the changing workforce, ensure the availability of critical skills and capabilities as needed;
- 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 Plant. This incorporates the principle that an integrated safety management system shall be used to perform Y-12 Plant missions on time, at a reasonable cost, and while protecting human health and the environment. Operational excellence shall include a focus on the requisite rigor and discipline in all aspects of Contractor activities and, in particular, holding management and staff accountable. To achieve this operational excellence, it is essential that operations at the Y-12 Plant be performed in a manner that meets DOE and other regulatory objectives. Therefore, a disciplined, effective and efficient management system to achieve current expectations in Nuclear Facility Operations is a significant additional objective of this Contract.

C.2 WORK REQUIREMENTS

1.0 Introduction

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

20 General Requirements

21 Defense Programs Strategic Planning Process

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

- Directed Stockpile Work is activity that supports ongoing stockpile maintenance and refurbishment work as well as the scientific understanding and engineering development capabilities necessary for the refurbishment and certification of the stockpile to support Stockpile Life Extension Programs.
- Campaigns are focused efforts involving the weapons plants, the three weapons laboratories, and the Nevada Test Site (NTS), to address critical capabilities needed to achieve key future program objectives. Campaigns are technically challenging, multi-function efforts that have definitive milestones, specific work plans, and specific end dates
- 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.

22 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 Plant. The Contractor shall maintain national security mission competency and capability and be responsible for managing other non-DP work activities.

30 Directed Stockpile Work

31 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 Joint Test Assemblies (JTAs), and other components as specified in the DOE Program Requirements (PCRs). 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 assembly¹ 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.

3.2 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.

3.3 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 Plant. 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.

3.4 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 Plant 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.

4.0 Campaigns

4.1 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.

4.2 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.

4.3 Material Readiness

The Material Readiness Campaign includes activities to support the construction of a new Highly Enriched Uranium (HEU) storage facility at Y-12. 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.

4.4 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/recertification 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.

5.0 Readiness in Technology Base and Facilities

5.1 Facilities and Manufacturing Processes

5.1.1 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.

5.1.2 Modernization and Facility Transition Program (M&FT)

The Contractor shall provide activities directed at the following: (1) implementation of the Y-12 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 Plant 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.

5.1.3 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 and control and accountability for Special Chemical Processing; (4) accountability, and inventory of E precious metals.

5.1.4 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.

5.1.5 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 Plant 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.

5.1.6 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 Plant. 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.

5.1.7 Enriched Uranium Operations (EUO) Process Based Restart

The contractor shall provide the activities required to resume EUO and related support at the Y-12 Plant 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.

52 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 Plant 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 970.5204-2 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.

5.2.1 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 be responsible for managing all wastes up to the point of acceptance by another contractor. This includes, but is not limited to, transporting sanitary wastes to onsite landfill; operating accumulation areas for newly generated hazardous and mixed wastes; operation of RCRA-permitted units for enriched uranium-bearing mixed waste and treatment of cyanide-bearing wastes; and management of radioactive waste, PCB-bearing waste, and wastewaters. 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. The Contractor shall implement a Pollution Prevention Program to ensure that unnecessary waste is not generated and to encourage waste reduction. Activities to be taken by the Contractor include waste minimization/pollution prevention activities, recycling, technology development, waste characterization, requesting disposal of the waste, regulatory reporting and any necessary permitting.

5.2.2 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.

5.2.3 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.

5.2.4 Quality Assurance

The Contractor shall implement a plant 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.

5.3 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 Plant. The capital program is based upon Y-12 site strategic planning documents and the DOE Stockpile Stewardship Plan. The capital projects provide enhanced mission capabilities and improvements to the Y-12 Plant 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:

5.3.1 Strategic Systems (formerly Major Systems Acquisitions)

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 Plant 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.

5.3.2 Line Item Projects

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 Plant 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.

5.3.3 General Plant Projects (GPP)

The Contractor shall provide activities associated with the execution of tasks assigned to the Y-12 Plant 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.

5.3.4 General Plant 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 Plant 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.

5.3.5 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.

5.4 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:

5.4.1 Engineering and Construction

The Contractor shall provide or procure overall integrated engineering and construction support services for Government-owned facilities within the Y-12 Plant 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 plant support activities shall be procured by subcontract and provided in accordance with the clause in Section H, entitled "Workforce Transition and Management." These functions are required as necessary to plan, design, construct, modify, and manage Y-12 facilities, as well as support other areas of this SOW.

5.4.2 Real and Personal Property Management

The Contractor shall provide land and facilities management services for the Y-12 Plant area of responsibility consistent with DOE Order 430.1A Life Cycle Asset Management (LCAM). Specifically, the Contractor shall be responsible for: (1) maintenance of an integrated planning document incorporating stakeholder involvement for the Y-12 Plant Area of Responsibility and integration with the ORO Comprehensive Integrated Planning document; (2) assuring requirements of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the National Priority List, and the Federal Facilities Agreement are met, and that environmental investigations are performed appropriately; (3) supporting the Reservation Management process through membership in the joint Reservation Management Organization (RMO) and a Contractor Land Use Committee; and (4) supporting and integrating reuse/conversion of facilities which have no future DOE mission. The Contractor Land Use Committee will serve as the integrating body for reservation planning, practices and budgets in support of DOE land management initiatives.

The Contractor shall provide overall landlord and custodial services for real and personal property at the Y-12 Plant including motor vehicle and fleet operational maintenance services and facilities occupied by DOE-ORO, other Contractors, or tenant organizations operating onsite under contract or agreement with DOE.

5.4.3 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 Plant in an energy efficient manner in accordance with developed energy management plans.

The Contractor shall manage the Oak Ridge Reservation (ORR) Power and Natural Gas Operations for the Y-12 Plant, the Oak Ridge National Laboratory (ORNL), and the East Tennessee Technology Park (ETTP) sites. The Contractor shall manage the associated commodity contracts, maintain system integrity, and provide monthly billing for services supplied and respond to system outages.

5.4.4 Maintenance Program

The Contractor shall provide maintenance activities including coordinating and accomplishing new equipment and facility installations, custodial services, plant 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 Plant 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 plant operations utilizing available resources.

5.5 Site Services

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

5.5.1 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, and management of nuclear material **control** and accountability (**MC&A**). Protective Force Operations are not within the scope of this contract.

5.5.2 Emergency Operations Program

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

The contractor shall support funding of the 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.

The emergency management program shall be conducted in accordance with applicable laws, regulations, orders 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.

5.5.3 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.

5.6 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.

6.0 Non-DP Work Scope

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

6.1 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 Plant to maintain its weapons production capabilities.

6.2 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.

6.3 Advanced Technologies

The contractor shall provided the activities required for integration of scientific and technological work among four Business Units: the National Security Program Office (NSPO), Advanced Infrastructure Management Technologies (AIMTech), Advanced Computing Technologies (ACT), and the Oak Ridge Centers for Manufacturing Technology (ORCMT)/National Prototype Center (NPC); and facilitate the necessary integration of work with Y-12 Weapons Program, Manufacturing, Technical Operations and Protective Services activities, and with the Oak Ridge National Laboratory.

6.3.1 National Security Program Office (NSPO)

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.

6.3.2 Advanced Computing Technologies (ACT)

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.

6.3.3 Advance Infrastructure Management Technologies (**AIMTech**)

The Contractor shall provide cost effective management and technical services in areas of environmental and risk assessment, facility and system infrastructure development/enhancement, regulatory compliance, and information systems through the development and application of advanced technologies to support key missions of DOE, other Federal agencies, state and local Government, foreign governments, and private partners. Typical services shall include strategic planning and technical **analysis**, energy and environmental assessments and project engineering; and site characterization, remedial designs, and remedial actions.

6.3.4 Oak Ridge Centers for Manufacturing Technology (**ORCMT**)/National Prototype Center (NPC)

The contractor shall provide the management and technical resources to develop partnerships and secure complementary work with other Federal agencies and the private sector to support technology needs and retention of critical **staff** for the Y-12 Plant missions. **ORCMT/NPC** provides services including: precision engineering; prototyping, and initial, low **rate** manufacturing of **components** and **systems**; **special materials development**; characterization, and **processing**; surface inspection, cleaning and **modification**; sensor and diagnostics **development** and application; information and knowledge capture, analysis and management; and advanced skills training.

6.4 All Other DOE Funding

The contractor shall provide support for the following activities that include funded activities that permit DOE to utilize its 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 Plant 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.

7.0 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:

- (a) Services incidental or related to the services described in other provisions of this SOW;
- (b) Services, using existing or enhanced facilities and capabilities, for the NRC, under interagency agreements between NRC and DOE;
- (c) 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;
- (d) Services to support other ORO Contractors, to the extent available, in conducting any and all activities; and
- (e) Services by DOE to perform maintenance and service functions outside the plant 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 Plant management and operations.

C.4 WORK STANDARDS

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

changes to assigned work. The Contractor shall manage and operate the Y-12 Plant for the DOE in a manner that ensures the safety of the public and the plant'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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**PART I
THE SCHEDULE**

**SECTION D
PACKAGING AND MARKING**

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**PART I
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**SECTION D
PACKAGING AND MARKING**

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PART I
THE SCHEDULE

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

E.2 ACCEPTANCE

Acceptance 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

F.1 TERM OF CONTRACT

The term of this contract is from the effective date of contract award through September 30, 2005, which includes the transition period. The transition period will commence on the effective date of the award and continue through September 30, 2000. The Government may extend the term of the contract by unilaterally exercising the options pursuant to the clause entitled "Option to Extend the Term of the **Contract**" in this Section F.

F.2 PRINCIPAL PLACE OF PERFORMANCE

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

F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT

- (a) The Government may extend the term of this Contract by written notice to the Contractor within 30 days, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 12 months before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) The total duration of this Contract shall not exceed ten years, not including the transition period.

F.4 **OPTION(S)**

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

The option **period(s)**, covering the period from October 1, 2005, to September 30, 2010, may be for a **period(s)** from one to five years. The **CO will** determine the duration of the option **period(s)** at the time of written notification to the Contractor. Successive option's may be exercised up to a total of five years. DOE has the option to extend the contract in increments of one to five **years**. Provisions of the basic contract apply to any and all options which may be exercised.

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 necessary to be prepared to assume responsibility for the Contract work on October 1, 2000. The Contractor shall coordinate its activities with DOE and the incumbent contractor so as to accomplish an effective transition of personnel and work activities while minimizing the cost of this effort. The scope of activities that are to be performed and the available budget during this period shall be subject to DOE approval.
- (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,

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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:

"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
Oak Ridge Operations Office
Procurement and Contracts Division
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 OFFICERS 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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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 October 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 October 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

- (a) The Contractor shall design, develop, or operate the following systems of records on

<u>DOE SYSTEM NUMBER</u>	<u>TITLE</u>
5	Personnel Records of Former Contractor Employees
11	Emergency Locator Records
14	Report for Compensation
15	Payroll and Pay-Related Data for Employees of Terminated Contractors
25	Employee Parking Records
26	Official Travel Records
27	Foreign Travel Records
28	General Training Records
29	Technology Training Program–Skill Training at Technician Level
31	Firearms Qualification Records
33	Personnel Medical Records
35	Personnel Radiation Exposure Records
38	Occupational and Industrial Accident Records
40	Contractor Employees Insurance Claims
43	Personnel Security Clearance Files
48	Security Education and/or Infraction Reports
51	Employee and Visitor Access Control Records
54	Investigative Files of Inspector General
55	Freedom of Information and Privacy Act Requests for Records
56	Congressional Constituent Inquiries
58	General Correspondence Files
59	Mailing Lists for Requestors of Energy-Related Information
71	The Radiation Accident Registry
72	The Department of Energy Radiation Study Registry
73	The US-DPTA Registry
88	Epidemiologic and Other Health Studies. Surveys and Surveillances

The Contractor shall perform this requirement in accordance with the clause in Section I of this contract entitled "**Privacy Act.**" It is **understood** that compliance with the Privacy Act will require certain changes to the Contractor's current **record** keeping procedures. DOE and the Contractor agree that an employee whose employer changes from **Lockheed** Martin Energy Systems, Inc. (LMES) to the Contractor, or vice-versa, shall not be considered a "**Former Contractor Employee**" under DOE System **5** above.

- (b) If DOE requires the Contractor to design, **develop, or** maintain additional systems of Government-owned records on individuals to accomplish an agency function, the CO, or **designee, shall** so notify the Contractor in writing and such Privacy Act system shall be deemed added to the above list whether incorporated by formal contract modification or not. The parties shall mutually agree to a schedule for implementation of the Privacy Act with respect to each such System.

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 forth: 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 Advance's**," 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 CONTRACTOR'S 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 Clauses in Section I entitled "**Allowable Costs and Fixed-Fee (Management and Operating Contracts)**" and "**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:

- 2
- (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, 2000)

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

- (a) For contractor travel expenses incurred on or after October 1, 1999, a ceiling limitation of \$_____ (to be determined) shall apply to all reimbursements made for contractor travel expenses under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer.

- (b) Notwithstanding any other provisions of the contract, 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, 1999, and before October 1, 2000, which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after December 1, 1999, and before October 1, 2000. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) 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
- (d) 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.
- (e) 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) 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."
- (f) 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.

- (g) Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this contract shall be initiated only when authorized in accordance with the provisions of this 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.
- (h) Order of Precedence. This clause is of lesser order of precedence than the contract clause in Section I entitled "Allowable Costs and Fixed-Fee (Management and Operating Contracts);" 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.
- (i) 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.
- (j) 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) In addition to those functions specifically reserved throughout this Contract for the Contracting Officer, the Contracting Officer shall be the sole authority for assignment of WADs, establishment of work priorities, and directing work requiring the expenditure of funds which have been obligated for performance of this Contract.
- (b) , Certain actions may be officially delegated in writing to Designated Officials. A designated official is an individual, designated by the Contracting Officer, to act as authorized representative for such functions as technical monitoring, inspection, and other functions of a more technical nature not involving a change in the scope, cost, terms or conditions of the Contract pursuant to the Section H provision entitled "Modification Authority." Copies of any such delegations relating to this Contract will be provided to the Contractor. The Contractor shall comply with written direction provided by the Designated Officials. For the purposes of this contract, the following individuals are identified as Designated Officials:
- Assistant Manager for Defense Programs
 - Deputy, Assistant Manager for Defense Programs
 - Director, Programs Division
 - Director, Technical Division
 - Director, Operations Division
 - Senior Authorization Basis Engineer
- (c) The work performed by the Contractor in compliance with the terms of this Contract shall be subject to performance direction from the Designated Officials as follows:

- (1) Directions to the Contractor which redirect the Contract effort, shift work emphasis within work area or a WAD, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the SOW.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the Contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the Contract.
 - (4) Monitoring compliance with applicable environmental, safety and health requirements.
- (d) The Contractor shall only accept performance direction if provided in writing and if within the Statement of Work of the Contract and the WAD. Performance direction shall not: authorize the Contractor to exceed the total funds obligated on the Contract or any estimated cost on a WAD, entitle the Contractor to any increase in the total amount of fee set forth in the contract, change any of the expressed terms or conditions of the contract, or interfere with the Contractor's rights under the terms and conditions of the Contract. It is expected that there will be full and open communication between the functional counterparts of the DOE and the Contractor's organization.
- (e) The Contractor shall proceed promptly with the performance required by duly-issued written performance direction. If, in the opinion of the Contractor, any performance direction violates the prohibitions set forth in paragraph (d) of this clause, the Contractor shall not proceed but shall promptly orally notify the Contracting Officer of the direction and reason(s) the direction violates the provisions of this subsection. The Contractor shall confirm this notification in writing within ten (10) workdays from receipt of DOE's written direction. The Contracting Officer shall render a decision on whether or not the performance direction is or is not within the Statement of Work of the Contract and whether or not a change order will be issued pursuant to the Contract Clause entitled "Changes." or paragraph (f) of the subsection of this part entitled "Work Authorization System." This decision shall be issued or confirmed in writing and the Contractor shall promptly comply with the Contracting Officer's direction.

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 to 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 at 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").
- (h) 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 COMMUNITY COMMITMENT

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 PERFORMANCE IMPROVEMENT AND COLLABORATION

As a key component of the Department's NWC, the contractor agrees to work in collaboration with other production plants and design laboratories in the Nuclear Weapons complex to achieve a balanced nuclear weapons complex workload and to create a modern integrated complex with unique and interdependent facilities. To this end:

- (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, and all other DOE management and operating contractors 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 PUBLIC AFFAIRS

- (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 its effort under the Contract. The responsibilities under this subsection must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel.
- (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 established DOE procedures for obtaining advance clearances on all oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, the Contractor must notify the CO and appropriate DOE public affairs personnel of any communications or contacts with Members of Congress relating to the effort performed under the Contract
- (f) The Contractor must notify the CO and appropriate DOE public affairs personnel of any 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 releases 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 October 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. However, incumbent employees hired by the Contractor after the effective date of the contract shall not retain their current service credit.
- (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: **E. Allen Womack, Jr.**

Position: **President**

Company: **BWX Technologies, Inc.**

H.34 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this contract to organize a dedicated corporate entity to carry out the work under the contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the "Performance Guarantee **Agreement**" incorporated in the contract in Section J, 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 PATENT INDEMNITY - SUBCONTRACTS

Except as otherwise authorized by the CO, the Contractor must obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any U.S. 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 subcontractor for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

H.36 AUTHORIZATION AND CONSENT - RESEARCH AND DEVELOPMENT SUBCONTRACTS

The contractor agrees to include the Authorization and Consent clause at FAR 52.227-1 with its Alternate 1, suitably modified to identify the parties in all subcontracts at any tier for research and development activities.

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**. 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 (**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.

- (b) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOV/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 C.O. 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.
- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOV/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 second full fiscal year 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 in the first two years of the Contract meets or exceeds quality performance expectations as defined below. This assessment allows DOE to make an informed decision regarding Contract term.
- (b) The Special Assessment will review annual performance evaluations in accordance with the PEMP and Contractor performance against the milestones 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

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 52.2306, "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, ~~paragraph (e)(12)~~ of the clauses in Section I entitled, "Allowable Costs and Fixed-Fee (Management and Operating Contracts)" and "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 REFUND OF ROYALTIES

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- (b) During the performance of the contract, if any additional royalty payments are proposed to be charged to the Government as costs under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties
 - (9) In addition, if specifically requested by the Contracting Officer, the Contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents, copyrights, or other **data**.
- (c) The term "royalties" are used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.
- (d) The **Contractor** must furnish to the Contracting Officer, before final payment under this contract, a statement of royalties **paid** in connection with performing this contract and **subcontracts** hereunder.
- (e) The Contractor is compensated for any royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price or are determined by

the Contracting Officer during performance of the contract to be properly chargeable to the Government and allocable to the contract.

- (f) The Contracting officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. 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 or the proprietary nature of data pursuant to which royalty or other payment is to be or has been made.
- (g) If at any time within three years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the contractor must promptly notify the Contracting Office of that fact and must promptly reimburse the Government in a corresponding amount.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (f), 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.

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CONTRACT CLAUSES

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CONTRACT CLAUSES

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SECTION I
CONTRACT CLAUSES

I.1 FAR 52.202-1 DEFINITIONS (OCT 1995)

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the DOE and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item
- (c) "Commercial item" means--
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and ~~that--~~
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but ~~for--~~
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal **Government** requirements. "**Minor**" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or **component**, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the **requirements** of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a **type** customarily combined and sold in combination to the general public;
 - (5) **Installation** services, maintenance **services**, repair services, training services, and other services if such services are procured for **support of** an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such **services--**
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific **service** performed;
 - (7) Any item, Combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, **combination** of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means--
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

12 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.

13 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.

14 **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.

15 **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.

16 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.
- 17 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.

18 FAR 52203-12 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.

1.9 FAR 52.2044 **PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

- (a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent post-consumer material.
- (b) The 20 percent standard applies to high-speed copier paper, offset paper, forms, bond, computer printout paper, carbonless paper, file folders, white, woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent post-consumer material standard is 50 percent recovered material content of certain industrial by-products.

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

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing; whether as of the time of award of the subcontract, the **subcontractor, or its principals**, is or is not debarred, suspended, or proposed for debarment by the **Federal Government**.
- (c) A corporate officer or a designee of the Contractor shall **notify** the Contracting Officer, in writing, **before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment** (see FAR 9.404 for information on the **List of Parties Excluded from Federal Procurement and Non-procurement Programs**). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Non-procurement Programs.

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

I.11 FAR 52.211-5 MATERIAL REQUIREMENTS (OCT 1997)

- (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 that have been recovered or diverted from solid waste including postconsumer material, but such 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** previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or 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, 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, shall not be used unless the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

1.12 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.

1.13 FAR 52.215-15 • PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.
- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

1.14 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.

1.15 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (NOV 1999)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 365 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option provision.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

1.16 FAR **52.219-4** NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZone SMALL BUSINESS CONCERNS (JAN 1999)

- (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.
- Offer 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;
- (9) 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.

1.17 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

- (a) It is the policy of the United States that small **business** concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women 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. HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.
- (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--**
 - (1) "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
 - (2) "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.
 - (3) "Small business concern owned and controlled by socially and economically disadvantaged individuals and small disadvantaged business concern" means a small business **concern** that represents, as part of its **offer, that--**
 - (i) *It* has received certification as a small disadvantaged business concern consistent with 13 CFR 124.1002. Subpart B;
 - (ii) No material change in disadvantaged **ownership** and control **has** occurred since its certification;
 - (iii) 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
 - (iv) **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).
 - (4) "Small business concern owned and controlled by women" means a small business **concern--**

- (i) Which 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
 - (ii) 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 HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

1.18 FAR **52.219-9** SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)

- (a) This clause does not apply to small business concerns
- (b) Definitions. As used in this clause-
 - "Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.
 - "Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
 - "Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.
 - "Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.
 - "Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan, that separately addresses subcontracting with small, business. 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, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror's subcontracting plan shall include the following:
 - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, 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 HUBZone small business concerns;
 - (iv) Total dollars planned to be subcontracted to small disadvantaged business concerns: and
 - (v) 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) HUBZone small business concerns;
 - (iii) Small disadvantaged business concerns, and
 - (iv) 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), 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 womenowned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's **sizeand** ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and womenowned 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) HUBZone small business concerns;
 - (iii) Small disadvantaged business concerns; and
 - (iv) 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, 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 plan similar to the 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 the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and
 - (iv) Ensure that its subcontractors agree to submit SF 294 and 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, 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, 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, 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 HUBZone small business concerns were solicited and, if not, why not;
 - (C) Whether small disadvantaged business concerns were solicited and if not, why not;
 - (D) Whether women-owned small business concerns were solicited and if not, why not; and
 - (E) 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; and
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
 - (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, 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, 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, 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, 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, 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 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 Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

1.19 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.

120 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.

121 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.

122 FAR **52.222-3** CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the **Northern** Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the **term** of their sentence or persons who have been pardoned or who have **served** their terms. Nor shall it prohibit the employment by the **Contractor** in the performance of this contract of **persons** confined for violation of the laws of **any** of the States, the District of Columbia, the Commonwealth of **Puerto** Rico, the Virgin Islands, **Guam**, American Samoa, the Commonwealth of the **Northern** Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, **if-**

- (a) (1) The worker is paid or is in an approved work training **program** on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) 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; and
- (4) 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

- (b) 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.

123 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION (JUL 1995)

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) Withholding for unpaid wages and liquidated damages. 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 any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall **preserve** them for a period of **three** years from the completion of the contract for all **laborers** and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
- (2) The records to be **maintained** under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts, exceeding \$100,000, the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractor to include these **provisions** in any lower tier subcontracts.

The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

124 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).

125 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.

126 FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

- (a) 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 subparagraphs **(b)(1)** through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performing this contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to --
- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in

Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

- (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through 11 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

127 FAR 52.222-29 NOTIFICATION OF **VISA** DENIAL (FEB 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM) 2201 C Street NW, Room 7325, 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 in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

128 FAR 52.22235 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 3998)

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

"All employment openings" includes 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.

"Appropriate office of the State employment **service** system," means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that 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.

"Veteran of the Vietnam era means a person **who--**

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

(b) General

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(b) Listing openings.

- (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
- (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing 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.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, 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 system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability

- (1) 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, Guam, and the Virgin Islands.
- (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postinas.

- (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 disabled veterans and veterans of the Vietnam era, 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. They shall be in a **form** prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and 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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- (f) **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.
- (g) **Subcontracts.** The Contractor shall include the terms of this clause in every **subcontract** or purchase order of \$10,000 or more 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**.

129 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.

130 FAR **52.222-37** EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

- (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 disabled veterans and the number of veterans of the Vietnam era 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 that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted 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 during the period January through March 1st of the year the report is due, or
 - (2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
 - (3) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era 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 the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (e) Subcontracts. The Contractor shall include the terms of this **clause** in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

131 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.

1.32 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

- (a) Executive Order 12856 of August 3, 1993, 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).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Data Safety Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

1.33 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.

1.34 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the ~~alternate~~ thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR 19.102 of the Federal Acquisition Regulation (FAR); or
 - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of ~~its~~ owned or operated facilities used in the performance of this contract is no longer ~~exempt--~~
- (1) The Contractor shall notify the Contracting Officer; and
 - (2) The Contractor, as owner or operator of a facility used in ~~the~~ performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the ~~facility~~ becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor ~~shall--~~
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

1.35 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.

1.36 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.

137 FAR 52.225-1 BUY AMERICAN ACT - BALANCE OF PAYMENTS PROGRAM -- **SUPPLIES**
(FEB 2000)

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

"Component" means any item supplied to the Government as part of an end item or of another component.

"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 supplies delivered under a line item of a Government contract.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (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. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside 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-Balance of Payments Program Certificate."

138 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.

1.39 FAR **52.225-13** RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2000)

- (a) The contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, and Sudan.
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or **services** from entities controlled by the government of **Iraq**.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts

1.40 FAR **52.227-1** AUTHORIZATION AND CONSENT (JUL 1995) Alternate ■ (APR 1984) (MODIFIED)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) The Contractor agrees to Include, and require inclusion of, this clause (FAR 52.227-1 Unmodified), suitably modified to identify the parties, in all subcontracts at any tier for

supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

1.41 FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

1.42 FAR 52.227-3 PATENT INDEMNITY (APR 1984)

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to –
 - (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
 - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction

1.43 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 part 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.

1.44 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.

1.45 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 662t~~ 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.

1.46 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.

1.47 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.

1.48 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.

1.49 FAR 52.233-1 DISPUTES (DEC 1998)

- (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. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. 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 as required by subparagraph (d)(2) of this clause. 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.

150 **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.

151 **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.

152 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.

153 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.

154 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.

155 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.

156 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)

- (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 which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to **Part 31** of 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. 924 1 (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) Purs: 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.

157 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.

158 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.

159 FAR 52.244-6 **SUBCONTRACTS** FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

- (a) Definition.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, 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) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
 - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

- (4) **52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels** (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

160 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 52.24763 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

- (a) "International air transportation," as used in this clause, 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," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
- "U.S.-flag air carrier," as used in this clause, 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) The Contractor agrees, in performing work under this **contract**, to use **U.S.-flag** air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (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.

162 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED **U.S.-FLAG** COMMERCIAL VESSELS (JUN 1997)

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 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) above, 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) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to--
- (1) Contracts at or below the simplified acquisition threshold;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) 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
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (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: 202-366-2324.

163 FAR **52.247-67** - SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

- (a) (1) In accordance with paragraph **(a)(2)** of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation **services** on which the United States will assume freight charges **that** were paid --
- (i) By the Contractor under a cost-reimbursement contract; and
 - (ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (2) Cost-reimbursement Contractors shall only submit for audit those **CBL's** with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA 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.
- (b) The Contractor shall **forward** copies of paid freight bills/invoices, **CBL's**, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration

attn: FWA

1800 F Street. NW

Washington. DC 20405

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

- (c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA.. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA..
- (d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show --
 - (1) The name and address of the Contractor;
 - (2) The contract number including any alpha-numeric prefix identifying the contracting office;
 - (3) The name and address of the contracting office;
 - (4) The total number of bills submitted with the statement; and
 - (5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

164 **FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996)**

- (a) The Government may **terminate** performance of work under this contract in whole or, from time to time, in part, if --
 - (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) . Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.

- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government –
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the **types** referred to in **subparagraph (c)(6)** of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved **by, the** Contracting Officer.
- The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or **paid** in any other manner directed by the contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this **120-day** period.
 - (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
- (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including —
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection; or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee
 - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
 - (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy 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.

1.65 **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, (f) 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.

166 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.

167 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.

168 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.

1.69 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.

1.70 DEAR 952.204-2 SECURITY (SEP 1997)

- (a) Responsibility. It is the Contractor's duty to protect in all classified information, special nuclear material and other DOE information. 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 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 Formerly Restricted Data. The term "Formerly Restricted Data" 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 Executive Order 12356).
- (j) Subcontracts and purchase orders. All as otherwise provided in writing by the Contracting Officer, the Contractor shall comply with the provisions contained in the foregoing in all subcontracts and purchase orders under this contract

1.71 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 invoking 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.

1.72 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 affecting 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.

1.73 DEAR ~~952.204-71~~ **952.204-74** FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (DEVIATION)

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting office?" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "**contract**" shall mean subcontract.
- (b) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of **FOCI** over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in **ownership** or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.
- (c) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the contractor to avoid or mitigate foreign influences. .

- (d) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or special nuclear material.
- (e) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.
- (f) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

1.74 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.

1.75 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) Disclos. 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 **t** 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.

1.76 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.

1.77 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**.

1.78 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.

1.79 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 if any of the following subcontracts for commercial items pursuant to 41 U.S.C. 403) exceed \$500,000.

1.80 1997 DEAR 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT (SEP 1997)
AS MODIFIED BY DEAR 970.5204-72 (FEB 1995)

(a) Definitions.

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

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

"Subject invention", as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781

(b) Allocations of principal rights.

- (1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.
- (2) Greater rights determinations.
 - (i) The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.
 - (ii) Within **two** (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any **country** for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
 - (iii) Not less than **thirty (30) days before the expiration of the request for a decision** by the **Patent and Trademark Office**, notify the **Patent Counsel** of any decision not to continue prosecution of the application
 - (iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

- (1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
 - (i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
 - (ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title. DOE has the right in accordance with the procedures in the DOE patent waiver regulations (**10 CFR part 784**) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the

Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that-

- (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.
- (iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- (v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.
- (d) Minimum rights to the Contractor.
- (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in

which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

- (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions. any decision concerning the revocation or modification of its license.
- (4) The contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights. subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.
 - (i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
 - (A) The commercial use that is being made, or is intended to be made, of said invention. and
 - (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
 - (ii) The **Government** shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee **determines** that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
 - (iii) **ff** noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver

was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

- (iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- (v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
 - (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
 - (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- (vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
- (vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

- (e) Invention identification, disclosures, and reports.
- (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within six months of conception **and/or** first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception **and/or** the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
 - (2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known **at** the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.
 - (3) The Contractor shall furnish the Contracting Officer the following:
 - (i) Interim reports every **12** months (or such **longer** period **as** may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that **such** disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.
 - (ii) A final report, within three months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.
 - (4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all **papers necessary** to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format

should require, as a minimum, the information required by subparagraph (e)(2) of this clause. (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

- (f) Examination of records relating to inventions.
- (1) The Contracting Officer or any authorized representative shall, until three years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--
 - (i) Any such inventions are subject inventions;
 - (ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;
 - (iii) The Contractor and its inventors have complied with the procedures. (2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.
 - (2) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts).
- (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--
 - (i) Convey to the Government, using a DOE-approved form, the title ~~and/or~~ rights of the Government in each subject invention as required by this clause.
 - (ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;
 - (iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;
 - (iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or
 - (v) Provide the ~~information~~ regarding subcontracts pursuant to subparagraph (h)(4) of this clause.
 - (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
 - (3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

- (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.
- (h) Subcontracts.
- (1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—
- (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
- (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those **matters** covered by this clause
- (4) The Contractor shall promptly notify the Contracting **Officer** in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of **award** and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
- (5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the **performance** of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.
- (i) Preference United States industry. Unless **provided** otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

- (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
- (2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) Background Patents.

- (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
 - (i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
 - (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
- (2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.
- (3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.
- (4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
 - (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
 - (ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter. l) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication. ,

(m) Forfeiture of rights in unreported subject inventions.

- (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
 - (i) Files or causes to be filed a United States or foreign patent application thereon; or
 - (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.
 - (2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:
 - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
 - (ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
 - (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
 - (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in **trust** for the Government. The forfeiture provision of this paragraph (m) shall be in addition **to and** shall not supersede other rights and remedies which the Government may have with respect to subject inventions.
- (n) Transfer to successor contractor.
- (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, 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 also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.
 - (2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.
- (o) 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. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

NOTE: In view of the Technology Transfer Mission established for Government-owned, contractor-operated laboratories by the National Competitiveness Technology Transfer Act of 1989, it is expected that the Department will grant a waiver of the Government's rights in Subject Inventions if the contractor is a profit-making entity. Upon grant of waiver, the above Patent Rights clause will be replaced with a Patent Right clause reflecting the waiver grant.

1.81 DEAR 952.247-70 FOREIGN TRAVEL (FEB 1997)

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date. be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

1.82 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) 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 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 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 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
 - (2) arises out of 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
 - (D) 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
- (1) to 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 Audit and Records--Negotiation, 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 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (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 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 subcontracts 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

1.83 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (JUN 1995)(MODIFIED)

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contract airline fares, offered hotel and motel lodging rates and negotiated car rental rates, when use of such discounts would result in lower overall trip costs and the services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

- (a) Contract airlines. Airlines participating in travel discounts are listed in commercial publications. Regulation* governing the use of contract airlines are contained in the Federal Travel Regulation (FTR), 41 CFR part 301-15, sets out the authorized methods of obtaining contract fares when such fares are available to cost-reimbursement contractor employees.
- (b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the commercial publications, which show rates and facilities, and identify by code those properties which offer reduced rates to cost-reimbursable contractor employees while traveling on official contract business.
- (c) Car rentals: The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable contractor employees while traveling on official contract business are listed in the commercial publications.

- (d) Procedures for obtaining service.
- (1) Identification and method of payment requirements for participating Federal contract airlines are listed in the FTR. Available travel discount air fares may be ordered by an eligible contractor Travel Management Center (TMC), provided the letter of identification signed by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, the eligible contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when a TMC is not available. Some airlines allow the purchase of discounted air fares with cash or credit card.
 - (2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
 - (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.
- (e) Standard letter of identification. Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

**FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR TRAVEL DISCOUNTS
(TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)**

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the contracting officer)

184 DEAR **970.5204-1(b)** COUNTERINTELLIGENCE(SEP 1997)

- (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 information from 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.

185 DEAR 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (JUN 1997)

- (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 SOW;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;

- (4) Perform work with 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 DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ESRH 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) The Contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- (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 require that the subcontractor submit a Safety Management System for the Contractor's review and approval.

186 **DEAR 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996) (MODIFIED)**

- (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, 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 the clause, Access to and Ownership of Records, at all reasonable' times, before and during the period of retention provided for in paragraph (d) of this clause. and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting **Officer** may from ~~time to time~~ direct during the progress of the work or, in any event, as the Contracting **Officer** shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of the 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 (i) 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. The contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at FAR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (i) of this clause, but which contains a "defective cost or pricing data" clause
- (h) Internal audit. The Contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.

(i) 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.

187 DEAR 970.5204-11 CHANGES (APR 1984)

- (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.

1.88 DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (JUL 1994)

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

1.89 DEAR 970.5204-13 ALLOWABLE COSTS AND FIXED-FEE (MANAGEMENT AND OPERATING CONTRACTS) (MAR 1998) (MODIFIED)

- (a) Compensation for Contractor's services. Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) Fixed-fee. The fixed-fee payable to the Contractor for the performance of the work under this contract is \$0. There shall be no adjustment in the amount of the Contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.
- (c) Allowable costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:
- (1) Allowability and reasonableness in accordance with FAR 31.201-2(d) and 31.201-3;
 - (2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and
 - (3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.
- (d) Items of allowable cost. Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:
- (1) Bonds and insurance, including self-insurance, as provided in the clause entitled. Insurance—Litigation and Claims.
 - (2) Communication costs, including telephone services, local and long distance calls, telegrams, cablegrams, postage, and similar items..
 - (3) Consulting services (including legal and accounting); and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraphs (e)(16) and (e)(26).
 - (4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance—Litigation and Claims, and the DOE approved Contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.
 - (5) Losses and expenses (including settlements made with the consent of the CO) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this **contract**.
 - (6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, **subject** to approvals **required** under other provisions of this contract.

- (7) Patent: purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.
- (8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the Contracting Officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the Contracting Officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:
- (i) Salaries and wages; bonuses and Incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Contractor) committees, provided, however, that the Contracting Officer's ~~is required in a~~ ~~instanc~~ of total compensation to an individual employee at an annual rate of \$80 (see 970.3102-2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;
 - (ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers compensation plans. (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);
 - (iii) Travel (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
 - (iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;
 - (v) Personnel training (except special education and **training** courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and

technical personnel in specialized fields required in the contract work;

- (vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates. employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
- (vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.
- (viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the Contractor FY by the Administrator. Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).
- (9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under paragraph (f) of the clause of this contract entitled. Property.
- (10) **Subcontracts** and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this contract.
- (11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer.
- (12) Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
- (13) Utility services, including electricity, gas, water, and sewerage.
- (14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).
- (15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, **service** charges, the cost of disbursing cash, necessary guards, -cashiers, and paymasters. If **payments** to employees are made by check, facilities and arrangements for **cashing** checks may be **provided** without expense to the employees, **subject to the approval of the Contracting Officer**
- (16) Camp operations, to the extent approved by the Contracting Officer.
- (17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the Contracting Officer.
- (18) Rental for
 - (i) construction plant and equipment rented by the Contractor from others at rates and under written agreements approved by the Contracting Officer, and
 - (ii) construction plant and equipment owned and **furnished** by the Contractor under this contract
- (e) Items of unallowable costs. The following items of costs are unallowable under this contract to the extent indicated:

- (1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs
 - (i) Specifically required by the contract.
 - (ii) Approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract.
 - (iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of Federally owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or
 - (iv) Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.
- (2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
- (3) Proposal expenses and costs of proposals.
- (4) Bonuses and similar compensation under any other name, which
 - (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or
 - (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or
 - (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- (5) Central and branch office expenses of the Contractor, except as specifically set forth in the contract.
- (6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (7) Contingency reserves, provisions for.
- (8) Contributions and donations, including cash. Contractor-owned property and services, regardless of the recipient.
- (9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- (10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

- (11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.
- (12) Fines and penalties, except, with respect to civil fines and penalties only, if the Contractor demonstrates to the Contracting Officer that--
 - (i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer; or
 - (ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.
- (13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.
- (14) Insurance (including any provisions of a self-insurance reserve) on any **person** where the Contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause **970.5204-31 Insurance–Litigation and Claims**.
- (15) Interest, however represented (except
 - (i) Interest incurred in compliance with the contract clause entitled "State and local Taxes" or,
 - (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted **accounting principles** (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.
- (16) Legal, **accounting**, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation (except where incurred pursuant to the Contractor's performance of the Government-funded technology transfer mission and in accordance with the Litigation and Claims article).
- (17) Losses or expenses:
 - (i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;
 - (ii) On other contracts, including the Contractor's contributed portion under **cost-sharing** contracts;
 - (iii) In connection with price reductions to and discount purchases by employees and **others** from any source;

- (iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the Contracting Officer but which the Contractor failed to procure or maintain through its own fault or negligence;
 - (v) That result from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel (as that term is defined in the clause of this contract entitled. Property);
 - (vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled. Insurance-. Litigation and Claims; or
 - (vii) That represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.
- (18) Maintenance, depreciation, and other costs incidental to the Contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.
 - (19) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.
 - (20) Precontract costs, except as expressly made allowable under other provisions in this contract.
 - (21) ~~Research~~ and development costs, unless specifically provided for elsewhere in this contract.
 - (22) ~~Selling~~ cost, except to the extent they are determined to be reasonable and to be **allocable** to the contract. **Allocability** of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the **Contractor's** product for agency use.
 - (23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.
 - (24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and local taxes," Federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954. as amended, respectively.
 - (25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Contractor's central office or ~~branch office~~ organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.
 - (26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organizational and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type Contractor.

- (27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare 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; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. **Individual Contractor** determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by **DOE** when the Contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the Contractor must justify and document the applicable **condition(s)** set forth above.
- (28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.
- (29) Late premium **payment** charges related to employee deferred compensation plan insurance.
- (30) Facilities capital cost of money. (CAS 414 and CAS 417).
- (31) Contractor costs incurred to influence either directly or **indirectly**--
- (i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or
 - (ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.
- (32) Commercial automobile rental expenses unless approved by the Contracting Officer.
- (33) Costs incurred in **connection** with any criminal, civil or administrative proceeding **commenced** by the Federal Government or a State, local or foreign government, as provided in the clause titled "Cost prohibitions related to legal and other proceedings" incorporated elsewhere in this contract.
- (34) Costs of alcoholic beverages.
- (35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.
- (36) Notwithstanding any other provision of this contract, **the costs** of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the Contractor **and/or** subcontractor against otherwise unallowable costs, unless such insurance or

bond is required by law, the express terms of this contract, or is authorized in writing by the Contracting Officer. The cost of commercial insurance to protect the Contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.

- (37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established Contractor plan or policy.
- (38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

1.90 DEAR 970.5204-15 OBLIGATION OF FUNDS (**APR 1994**) (MODIFIED)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is ~~to be determined~~. 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 (a) 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 clause entitled "Termination," 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. 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 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 45 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the Contractor's unpaid fee, 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, 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 clause entitled "Termination."

- (d) **Financial plan cost and performance 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 control 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 hereby 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 clause entitled "Termination."

191 DEAR 970.5204-16 PAYMENTS AND ADVANCES (JUN 1997) (MODIFIED)

- (a) **Payment of Base Fee and Award Fee.** The base fee, if any, is payable in equal monthly installments. Award fee pool amounts earned are payable following the issuance by the FDO of a **Determination of Award Fee Pool Amount Earned, in accordance with the clause of this contract entitled, Total Available Base Fee Amount and Performance Fee**. Base fee and award fee pool 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 or award fee pool amount earned 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 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 contributions 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.

-) 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 D. 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 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) Review and approval of costs incurred. The contractor shall prepare and submit annually 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.
- (9) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs 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 970.5204-31, "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.
- (g) **Claims.** Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (h) **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.
- (i) **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.
- (j) **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.

1.92 DEAR 970.5204-17 POLITICAL ACTIVITY COST PROHIBITION (DEC 1997)

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:
- (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
 - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
 - (3) Any attempt to influence
 - (i) the introduction of Federal or State legislation, or
 - (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;
 - (4) Any attempt to influence
 - (i) the introduction of Federal or State legislation, or
 - (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
 - (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.
 - (6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters..
- (b) **Costs** of the following activities **are** expected from the coverage of **paragraph (a)** of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:
- (1) Providing **Members** of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees shall be reimbursable, provided the request for such information or expert advice is a prior written request signed by a Member of Congress, provided such costs also comply with the allowable cost provision of the contract.

- (2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees shall be reimbursable, provided such costs also comply with the allowable costs provision of the contract.
 - (3) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the Contractor's authority to perform the contract if authorized by the Contracting Officer.
 - (4) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) **Unallowable** lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.
 - (d) The Contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditure Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the Contractor's certification that the requirements and standards of this clause have been complied with.
 - (e) The Contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.
 - (f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when:
 - (1) An employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) **25** percent or less of the employees' compensated hours of employment during that calendar month, and
 - (2) within the preceding five-year period, the Contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs: When conditions (f)(1) and (2) of this clause are met, the Contractor is not required to establish records to support the **allowability** of claimed costs in addition to records already required or maintained. Also, when **conditions (f)(1) and (2)** of this clause are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.
 - (g) During contract performance, the Contractor should resolve, in advance, any significant questions or disagreements between the Contractor and DOE concerning compliance with this clause.
 - (h) In providing information or expert advice under paragraph (b)(1) and (b)(2) of this clause, the Contractor shall advise the Contracting Officer in advance or as soon as practicable.

1.93 DEAR 970.5204-19 PRINTING (APR 1984)

- (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, plate making, 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) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

1.94 DEAR 970.5204-20 MANAGEMENT CONTROLS (AUG 1993)

- (a) 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. The systems of controls employed by the Contractor shall be documented and satisfactory to DOE. 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. 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 system are being accomplished and that these systems and controls are working effectively.
- (b) The Contractor shall be responsible for maintaining, as part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

1.95 DEAR 970.5204-21 PROPERTY (JUN 1997)

- (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 personalty 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 DOE 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 DOE 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 cost reimbursable contracts

1.96 DEAR 970.5204-22 CONTRACTOR PURCHASING SYSTEM (**ORO** MAR 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, 48 CFR 970.5204-44, and 48 CFR 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.7102. 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. The contractor shall manage a Self-Assessment Program and shall submit to the contracting officer a copy of Self-Assessment reports in accordance with written **direction** and guidance provided by the contracting officer. DOE reserves the right to review and approve the contractor's purchasing system in accordance with 48 CFR subpart 44.3. and DOE implementing policy and guidance. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) 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 970.7109.
- (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 970.7105 and 48 CFR 970.3102-15(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 on construction 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 970.5203-3 and 48 CFR 970.5204-3. 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 970.7105.
 - (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 101, the DOE Property Management Regulations 41 CFR 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 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 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 970.2903.
 - (6) Cost or pricing data clauses prescribed in 48 CFR **970.15406-2(b)**.

1.97 DEAR 970.5204-23 STATE AND LOCAL TAXES (APR 1984)

- (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.

*Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.

- (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 article, the procedures and requirements of the article entitled "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, togetherwith 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.

1.98 DEAR 970.5204-27(b) CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor in the same or related energy field or another organization except with the prior approval of the contractor. If the contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service may involve:

- (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration;
- (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's contractors;
- (3) the contractor's responsibility to report fully and promptly to DOE all significant research and development information; or
- (4) the patent provisions of the contractor's contract with DOE, the contractor shall obtain the prior approval of the contracting officer for such consultant or other comparable employment service.

1.99 DEAR 970.5204-29 PERMITS OR LICENSES (APR 1984)

Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

1.100 DEAR 970.5204-31 INSURANCE—LITIGATION AND CLAIMS (JUN 1997)

- (a) 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) 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 (48 CFR (DEAR) 970.5204-15).
- (f) 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 DEAR 970.3101-3, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, but excluding costs incidental to workers' 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--
- (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 attributable 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 (DEAR) 970.5204-21.

- (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.

1.101 DEAR **970.5204-33(a)** PRIORITIES AND ALLOCATIONS (APR 1994)

The Contractor shall **follow** the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for contract performance.

1.102 DEAR **970.5204-38** GOVERNMENT **FACILITY** SUBCONTRACT APPROVAL (APR 1994)

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.

1.103 DEAR **970.5204-39** ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995)

- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
 - (1) Executive Order 13101 of June 3, 1999, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition."
 - (2) Section 6002 of the Resource conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. **94-580**, **90 Stat. 2822**),
 - (3) Title 40 of the Code of Federal Regulations, Subchapter **I**, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter **I** Parts or Comprehensive Procurement Guidelines as the **Environmental** Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

- (4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.
- (b) The Contractor shall prepare and submit report on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.
- (c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

1.104 DEAR 970.5204-40 TECHNOLOGY TRANSFER MISSION (JAN 1996) ALTERNATE II (JAN 1996)

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 1(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 P.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 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, 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) SOW 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) Laboratory 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) Laboratory 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 FY 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 FY 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 "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 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 person who

has been a Weapon Production Facility employee within the previous two years or to the company in which he or she is a principal; and

- (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.
 - (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 FY exceed 5 percent of the Weapon Production Facility's budget for that FY, 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 co-inventors and coauthors, including **Federal** employee co-inventors 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 1.89, 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 his 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 his 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 90 days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. 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 Weapons Production Facility Director or designee of any disapproval or requirement for modification of a JWS.
 - (iv) Upon approval of a JWS, the Contractor's Weapons Production Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Weapon Production Facility Director or designee.
 - (v) 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. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.
- (2) Selection of Participants. The Contractor's Weapons 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.

1.105 DEAR 970.5204-42 KEY PERSONNEL (APR 1984)

It having been determined that the employees whose names appear in Section J, Attachment D, or persons approved by the Contracting Officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the Contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications.

1.106 DEAR 970.5204-54 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (APR 1999)

- (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 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 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 Fee Determination Official will be the Manager, Oak Ridge Field Operations Office or her designee. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Manager, Oak Ridge Field Operations Office or her 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, or Incentives" if contained in the contract
 - (4) When the award fee cycle consists of one evaluation period, add the following as paragraph **(c)(4)**: Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (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). 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. 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.
- (f) Contractor self-assessment. Following each evaluation period, the contractor may submit a self-assessment, provided such assessment is submitted within 5 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.

1.107 DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AU... 1992)

- (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 that 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.

1.108 DEAR 970.5204-59 **WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES**
(APR 1999)

- (a) The Contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR part 708.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, with respect to work performed on-site at a DOE-owned or leased facility, as provided at 10 CFR 708.

1.109 DEAR 970.520440 FACILITIES MANAGEMENT (NOV 1997)

Copies of DOE Directives referenced herein are available from the Contracting Officer.

- (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 DOE Directive **430.1a**, version in effect on effective date of contract, **entitled** Life Cycle Asset Management. 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 specified in DOE Directive 6430.1, version in effect on effective date of contract, entitled General Design

Criteria. 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) above. 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 DOE Directive 430.2, version in effect on effective date of contract, entitled In-House Energy Management. 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 970.0803.
- (d) Subcontract Reuirements. 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.

1.110 DEAR 970.5204-61 COST PROHIBITIONS RELATED TO LEGAL AND OTHER PROCEEDINGS (JUN 1997)

(a) Definitions.

Conviction, as used in this section, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or other retained by the Contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

Fraud, as used herein, means

- (i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,
- (ii) Acts which constitute a cause for debarment or suspension under FAR 9.406-(2)(a) and FAR 9.407-(2)(a), and
- (iii) Acts which violate the False Claims Act, 31 U.S.C. 3729-3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

Penalty does not include restitution, reimbursement, or compensatory damages

Proceeding includes an investigation

- (b) Except as otherwise described in this section, costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims

Act. 31 U.S.C. 3730, or costs incurred in connection with any criminal, civil or administrative proceeding by the Federal Government, or a State, local or foreign Government, are not allowable if the proceeding relates to a violation of, or failure to comply with a Federal, State, local or foreign statute or regulation by the Contractor, and results in any of the following dispositions:

- (1) In a criminal proceeding, conviction.
 - (2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of Contractor liability.
 - (3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.
 - (4) A final decision by an appropriate Federal official to debar or suspend the Contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.
 - (5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1), (2), (3), or (4) of this section.
 - (6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged Contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.
- (c) (1) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the Contractor and the Federal Government, then the costs incurred by the Contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.
- (2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable **costs** incurred by the Contractor in connection with such a proceeding that are not **otherwise** unallowable by regulation or by separate agreement with the United States, may be allowed if the Contracting Officer, in consultation with his or her legal advisor, determines **that** there was very little **likelihood** that the third party would have been successful on the merits.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign Government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were **incurred** as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer.
- (e) Costs incurred in connection with a proceeding described in **paragraph** (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:
- (1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;
 - (2) Payment of the costs incurred, as allowable and **allocable** contract costs, is not prohibited by any other **provision(s)** of this contract;
 - (3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and
 - (4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and

otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) shall be the amount determined to be reasonable by the Contracting Officer but shall not exceed 80 percent of otherwise allowable costs incurred. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied.

- (f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the Contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the Contractor was found liable or settled, are unallowable.
- (g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the Contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for the payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the Contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

1.111 DEAR 970.520463 COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (AUG 1993)

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.

1.112 DELETED

1.113 DEAR 970.5204-75 PREEXISTING CONDITIONS (JUN 1997) ALTERNATE II (JUN 1997)

- (a) The DOE 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 October 1, 2000. 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 October 1, 2000, the Contractor shall be responsible in accordance with the terms and conditions of this contract.

- (b) The obligations of the DOE under this clause are subject to the availability of appropriated funds.
- (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.

1.114 DEAR 970.5204-76 MAKE-OR-BUY PLAN (JUN 1997)

(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 DOE 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.

1.115 DEAR 970.5204-77 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY 1993 (JUN 1997)

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for FY 1993, 42 U.S.C. 7274h, in instances where the DOE has determined that a change in workforce at a DOE Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the DOE 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 the contract if the total value of the contract is greater than \$500,000.

1.116 DEAR 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES (JUN 1997)

- (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 DOE directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (c) 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 entitled, Changes, of this contract.
- (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 48 CFR (DEAR) 970.5204-2. 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) The Contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The Contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the Contractor determines such requirements apply.

1.117 DEAR 970.5204-79 ACCESS TO AND OWNERSHIP OF RECORDS (JUN 1997)

- (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 process 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.
- (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). 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 (DEAR) 970.5204-9, 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.
- (a) 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 1324.58, Records Management Program and DOE Records Schedules (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) Flow down. 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 CO);
 - (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 (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

1.118 DEAR **970.5204-80 OVERTIME** MANAGEMENT (JUN 1997)

- (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 percent.
- (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, four percent, 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

1.119 DEAR 970.5204-81 DIVERSITY PLAN (DEC 1997)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The Contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in DOE Acquisition Letter Number 98-04, dated March 11, 1998. 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, and (5) economic development (including technology transfer).

1.120 DEAR 970.5204-83 RIGHTS IN DATA-TECHNOLOGY TRANSFER (FEB 1998)

(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 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 and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.
- (c) Copyright (General).
- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.
- (d) Copyrighted works (scientific and technical articles).
- (1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or **402** and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (2) The Contractor shall mark each scientific or technical article first produced or composed **under this Contract** and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.
- Notice: This manuscript has been authored by <FILL> under Contract No. <FILL> with the DOE. 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 <FILL> under Contract No. DE-AC05-00OR22800 with the DOE. 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 DOE, 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 DOE to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by <FILL> and the [individual author], hereinafter the Contractor, under Contract DE-AC05-00OR22800 with the 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 (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 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 FAR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data—Facilities clause at DEAR 970.5204-82 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. **DE-AC05-00OR22800** with the United States DOE 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

- (i) This computer software is submitted with restricted rights under DOE Contract No. DE-AC05-00OR22800. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (ii) This computer software may be:
- (A) 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;
 - (B) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (C) Reproduced for safekeeping (archives) or backup purposes;
 - (D) 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
 - (E) Disclosed to and reproduced for use by Contractors under a **service** contract (of the type defined in FAR 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**.
- (iii) 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.
- (iv) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. DE-AC05-00OR22800 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 (molyr) in brackets or a box, a [R-molyr], 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.

1.121 DEAR 970.5204-85 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 1997)

- (a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Secretary 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

1.122 DEAR 970.5204-86 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES (APR 1999) (ALTERNATE I) (MAR 1999)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

- (a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of ~~the~~ Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, ~~fixed fee~~, profit or share of cost savings for the evaluation period by an amount up to the amount earned.
- (b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for

the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

- (c) Minimum requirements for specified level of performance
 - (1) At a minimum the Contractor must perform the following:
 - (i) The requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;
 - (ii) All of the performance requirements directly related to requirements specifically incentivized 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 Contracting Officer. 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 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 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.
- (d) 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 evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations Field Office Manager, or designee, at **his/her** sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the 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.

1.123 DEAR 970.5204-87 COST REDUCTION (APR 1999)

- (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.

PART III
LIST OF DOCUMENTS, **EXHIBITS** AND OTHER ATTACHMENTS

SECTION J
LIST OF ATTACHMENTS

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**SECTION J
LIST OF ATTACHMENTS**

**ATTACHMENT A
ADVANCE UNDERSTANDING ON HUMAN RESOURCE COSTS**

(TO BE NEGOTIATED AFTER CONTRACT AWARD)

The advance understanding required by the clause entitled. "***Advance Understanding on Human Resources***" in Section ***H*** will be Attachment A of the contract.

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**:SECTION J
LIST OF ATTACHMENTS**

**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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**SECTION J
LIST OF ATTACHMENTS**

**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.

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L.3.c Small, Small Disadvantaged and Woman-Owned Small Business Master Plan

Contractor: BWXY-12, LLC

Address: 1055 Commerce Park Dr., Ste. 300
Oak Ridge, TN 37830

Solicitation Number: DE-RP05-000R22800

Item/Service: _____

Amount of Contract First Year: _____

Total Amount of Contract Estimated: _____

Period of Contract Performance: _____

Options (if any): _____

This subcontracting plan describes BWXY-12's approach to involving small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns to the maximum extent practicable in the management and operation of the Y-12 Plant for DOE.

We support DOE's strong long-term commitment to diversity, and we believe that diversity is much more than affirmative action in the workplace. Diversity in subcontracting provides vital links to the local community, increases flexibility in meeting project goals, strengthens the local economy, creates new opportunities, is cost effective, and represents best business practice. This belief—transformed into action—provides us with a competitive advantage over other organizations, both in the workplace and in the business community. For BWXY-12, it is an operating principle of management that plays a key role in our success.

The parent companies of BWXY-12 have a long-established record of involving small business concerns in meaningful roles in government and commercial contracting. By building on our experience and by setting challenging and aggressive goals, we have made small business participation and development an integral aspect of our approach to project execution. We will follow this approach at the Y-12 Plant.

In executing the work at the Y-12 Plant, BWXY-12 will with FAR 52.219-8 and 52.219-9, prime contract requirements, and current DOE policies and practices. We will aggressively encourage the participation of small business concerns to the maximum extent practicable consistent with the efficient performance of the Y-12 scope of work. All procurements

are reviewed to identify opportunities for including small business suppliers and contractors, developing good working relationships with them, and encouraging them to offer their products and services to the Y-12 project.

1.12. Goals (dollar value and percentage)

Goals for subcontracting with SB, HUBZone, SDB and WOSB firms will be expressed in both dollar values and percentages and will be submitted and negotiated each year. The goals (presented in Attachment A) shall be deemed an adjunct to the master plan when approved in writing by the Contracting Officer.

3. potential subcontract Opportunities for Small Business

The table below lists the principal categories of subcontracting opportunities that will be made available for small business concerns. The categories shown are for general work groupings only. As additional opportunities are identified, the list will be expanded and goal percentages revised accordingly. Opportunities that are directed, or for which there is only a single supplier, are not considered available and are therefore not included in these goals.

Subcontracting potential	SB	HUBZone	SDB	WOSB
Computer equipment	■		■	
Office furniture/equipment	■	■		■
Office supplies	■	■	■	■
Communications equipment	■	■		■
Electrical and electronic supplies	■	■	■	■
Fuel and petroleum products	■	■	■	■
Lab equipment/instrumentation	■	■		
Safety equipment and supplies	■	■		■
Small tools	■	■	■	■
Construction equipment/vehicle rental	■	■	■	
Building materials	■	■	■	
General construction	■	■	■	■
Facilities maintenance and repair	■	■	■	
Road maintenance and repair	■	■		
Maintenance services (janitorial/equipment)	■	■	■	■
Technical and personnel services	■	■	■	■
Computer service/maintenance	■	■		
Administrative services (printing/copying)	■	■	■	■
Communications	■			
Educational services	■		■	■
Photo services	■			
Misc. services	■		■	■



4. Methods Used to Develop Subcontracting Goals

For the Y-12 proposal, we made a concentrated effort to locate qualified SB, HUBZone, SDB and WOSB firms for the areas of work we had identified as realistic opportunities for subcontractor participation. All work functions were carefully scrutinized to determine the opportunities. We then analyzed the opportunities against our source lists of small businesses. With our focus and commitment to maximize the use of small businesses in subcontracting, company capabilities were carefully evaluated in relation to the scope of work.

As a result of this analysis, we developed goals for inclusion in this Small Business Plan. The decision to establish the goals at the levels shown represents our analysis of the subcontracting opportunities available. Our HUBZone goals reflect the recent addition of this classification of small business, as well as our plan to increase participation as more HUBZone businesses are certified per FAR 19.3.

5. Methods Used to Identify Potential Sources for Solicitation

We continually identify and review potential sources of supplies and services, including, but not limited to, the following:

- Online access to U.S. Small Business Administration PRONET
- The BWXT Y-12 proprietary Supplier Information System, which includes past performance data
- National Minority Purchasing Council Vendor Information Services
- Historical reports and data showing products and services obtained from small business concerns by other associate contractors
- Various directories and source lists such as the following:
 - Local U.S. Small Business Administration listings
 - MBISYS (National Minority Supplier Development Council database)
 - Dun & Bradstreet Procurement Planning Directory for Small Business Products and Services
 - Minority Business Development Agency—Department of Commerce
 - "Funded Organizations," published by U.S. Minority Business Development Agency
- Small business fairs and forums designed to attract additional small business sources

6. Indirect Costs

Indirect costs are not included in the goals under this plan.

7. Administrator of Subcontracting Plan

Doris Heim, Business Systems Manager, has overall responsibility for our subcontracting program. She and her staff will develop, prepare, and execute individual subcontracting plans and monitor performance relative to the requirements of this plan. The means by which the Business Systems staff will carry out the requirements of this plan include, but are not limited to, the following activities:

- Maintain source lists of potential small business subcontractors.
- When the number of prospective sources is not adequate, seek out other small businesses through the use of mass media such as Internet bulletin boards.
- Mentor existing small business concerns currently under subcontract, enhancing their ability to provide timely, cost-effective, and quality services.
- Advise and train project management personnel on the purposes of this plan and foster adequate support.
- Keep records describing performance against the goals established herein.
- Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, in accordance with the prime contract and instructions provided by the Contracting Officer.
- Verify that subcontracts contain flowdown clauses pertaining to small business concerns when required and maintain the policies and procedures required by the prime contract.
- Maintain liaison and good working relationships with Small Business Administration representatives to obtain assistance and coordination in finding capable small business?
- Maintain a close working relationship with DOE to ensure that BWXT Y-12 project objectives and activities are consistent with the DOE program.
- Require lower-tier subcontractors to submit subcontracting plans, and monitor for compliance with the plans.
- Make monthly reports to the BWXT Y-12 General Manager concerning progress toward goals under this program.

8. Implementation

The following additional functions will be performed to effectively implement this plan:

- Package solicitations (including time for preparation, scope of work, quantities, specifications, and delivery schedules) to facilitate participation by small businesses in subcontracting opportunities and solicitation, offer, and proposal activities.
- Establish and maintain contacts with small business trade associations and business development organizations.
- Conduct internal workshops, seminars, and training programs to ensure that internal customers and buyers are acquainted with BWXT Y-12 policy and prime contract requirements, and to ensure that, externally, small businesses are familiar with requirements for doing business at the Y-12 site.
- Maintain an effective outreach program by sponsoring and attending regional procurement conferences, trade fairs, and other functions to locate additional qualified sources.
- Implement an ongoing "in-reach" program that gives small businesses access and exposure to key project planners and managers.
- Develop a comprehensive small business project source list (which also includes past performance) that is easily accessible and useful to buyers.
- Preselect and qualify small business concerns to perform specific scopes of work.
- Structure the program to help develop the capabilities and quality of services provided by small business suppliers and subcontractors currently performing work at Y-12.

9. Subcontract Terms and Conditions

BWXT Y-12 incorporates the flowdown clause requirements of FAR 52.219-9—when applicable to subcontracts offering further subcontracting opportunities—that requires all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a similar subcontracting plan. The BWXT Y-12 Business Systems Manager will be responsible for implementing and monitoring this phase of the Subcontracting Plan.

10. Reports, Studies, and Surveys

BWXT Y-12 will:

- Cooperate in any studies or surveys as may be required
- Submit periodic reports to allow the government to determine the extent of our compliance with this Subcontracting Plan
- Submit SF 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms as provided in agency regulations
- Ensure that our subcontractors agree to submit SF 294 and SF 295

11. Records

The following types of records will be maintained to demonstrate the procedures adopted to ensure compliance with the requirements and goals of the Subcontracting Plan:

- Source lists (e.g., PRONET), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns
- Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns
- Records on each subcontract solicitation resulting in an award of more than \$100,000 indicating:
 - Whether small business concerns were solicited and, if not, why not
 - Whether HUBZone small business concerns were solicited and, if not, why not
 - Whether small disadvantaged business concerns were solicited and, if not, why not
 - Whether women-owned small business concerns were solicited and, if not, why not
 - If applicable, the reason award was not made to a small business concern
- Records of any outreach efforts to contact:
 - Trade associations
 - Business development organizations
 - Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources

- (v) Records of internal guidance and encouragement provided to buyers through:
 - Workshops, seminars, training, etc.
 - Monitoring performance to evaluate compliance with program requirement
- (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

SUBMITTED BY:

signature: *Doris Heim*

Typed Name: Doris Heim

Title: BWXT 1'-12, LLC Business Systems Mgr.

Date: May 5, 2000

PLAN ACCEPTED BY:

Signature: _____

Typed Name: _____

Title: _____

Date: _____



Attachment A Annual Small Business Subcontracting Plan Goals

Prime Contract Number: DE-RP05-000R22800

1./2. Goals (percentage and dollar value)

The table below shows the BWXT Y-12's small business goals expressed in terms of percentages and estimated procurement dollars of total planned subcontracting dollars.

Total estimated dollars available for subcontracting: \$103,000,000

Category	Percentage*	Dollars*
Total planned and available for subcontracting to SB concerns	50%	\$51,500,000
Total planned and available for subcontracting to HUBZone SB concerns (included in SB concern numbers)	0.5%	\$515,000
Total planned and available for subcontracting to SDB concerns (included in SB concern numbers)	12%	\$12,360,000
Total planned and available for subcontracting to WOSB concerns (included in SB and SDB concerns as appropriate)	7%	\$110,000

*Goals include second tier SB/HUBZone/SDB/WOSB dollars (consistent with current practices of LMES)

SUBMITTED BY:

Signature: Doris Heim

Typed Name: Doris Heim

Title: BWXT Y-12, LLC Business Systems Mgr.

Date: May 5, 2000

PLAN ACCEPTED BY:

Signature: _____

Typed Name: _____

Title: _____

Date: _____



**SECTION J
LIST OF ATTACHMENTS**

**ATTACHMENT D
KEY PERSONNEL**

See the clause entitled, "Key Personnel" in Section I.

Attached is the BWXT Y-12 List of Key Personnel. Offer Page E-1

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L3.e Key Personnel

SECTION J—ATTACHMENT D LISTING OF KEY PERSONNEL

General Manager	John Mitchell
Deputy General Manager	Buddy Conner
DSW Program Manager	Bill Reis
Campaigns Program Manager	Kevin Finney
RTBF Program Manager	Bob Braddy
EUO Restart Manager	Pam Horning
Planning and Integration Manager	Larry Cumberland
Modernization Manager	Cindy Hayes
ES&H Manager	Les Reed
Operations Manager	Dick Carlson



SECTION J
LIST OF ATTACHMENTS

ATTACHMENT B
LAWS, REGULATIONS, AND DOE DIRECTIVES

The contractor shall perform work in accordance with applicable laws, regulations, DOE directives and national consensus standards as appropriate. Compliance with laws, Executive Orders, and regulations are mandatory, thus they are not listed here (no List A). The current baseline includes DOE and ORO orders, **Standards/Requirements Identification Documents (S/RIDs)** for environment, safety, health and quality, and Work Smart Standards for Engineering design and construction. For a complete listing of the applicable directives, please refer to the following Internet web sites

S/RIDs http://www-lmes1.ornl.gov/scripts/lmes_compliance/orfaqry.cfm

Work **Smart** Standards <http://www.yl2.doe.gov/sridlecwss.html>

DOE Directives <http://www.explorer.doe.gov:1776/htmls/directives.html>

ORO Directives http://www.ornl.gov/doe_oro_dmg/orchklist.htm

List B - Baseline List of Required Compliance Documents
(http://www-internal.ornl.gov/orders/base_toc.htm)

Current through Change Notice No. **OR43**, October 1, 1999

ITEM	DATE	TITLE
<u>SEN-34-91</u>	8/15/91	Implementation of the Chief Financial Officers Act of 1990 (P.L. 101-576)
<u>ORO O 130</u>	7/28/99 Chg 2	Chapter II - Shutdown of Departmental Operations Upon Failure of Congress to Enact Appropriations
<u>DOE O 130.1</u>	9/29/95	Budget Formulation Process
<u>DOE O 137.1</u>	9/4/98	Plan for Operating in the Event of a Lapse in Appropriations
<u>ORO O 140</u>	5/15/98 Chg 1	Chapter II - Safeguards Agreement with the International Atomic Energy Agency (IAEA)
<u>DOE M 140.1-1A</u>	1/26/99	Manual for Department of Energy Interface with the Defense Nuclear Facilities Safety Board
<u>DOE O 200.1</u>	9/30/96	Information Management Program
<u>DOE M 200.1-1</u>	3/00/97	Telecommunications Security Manual
<u>DOE N 205.1</u>	7/26/99	Unclassified Cyber Security Program

<u>ORO O 220</u>	7/28/98 Chg 1	Chapter I - Reporting Fraud, Waste, and Abuse to the Office of Inspector General
<u>ORO O 220</u>	1/7/99 Chg 1	Chapter II - Cooperation with the Office of Inspector General
<u>ORO O 220</u>	7/28/98 Chg 1	Chapter III - Establishment of Departmental Position on Inspector General Reports
<u>ORO O 220</u>	7/28/98 Chg 1	Chapter IV - Coordination of General Accounting Office Activities
<u>ORO O 220</u>	7/29/98 Chg 1	Chapter VII - Audit Resolution and Follow-up
<u>ORO O 220</u>	9/30/96	Chapter IX - Auditing of Programs and Operations
<u>DOE O 224.1</u>	12/8/97	Contractor Performance-Based Business Management Process
<u>DOE O 241.1</u>	8/17/98	Scientific and Technical Information Management
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter I - Oak Ridge Operations Standards Management Program Overview
<u>ORO O 250</u>	6/3/98 Rev 2 Chg 1	Chapter II - Oak Ridge Directives System
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter III - Oak Ridge Operations Technical Standards Program
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter IV - Contractor Directives Appendix
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter V - Development, Approval, & Maintenance of Work Smart Standards
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter VI - Implementation and Corrective Action Plans
<u>ORO O 250</u>	3/27/98 Rev 2	Chapter VII - Maintenance of Standards/Requirements Identification Documents
<u>DOE O 311.1A</u>	12/30/96	Equal Employment Opportunity and Diversity Program
<u>ORO O 350</u>	4/29/99 Chg 1	Chapter III - Federal Labor Standards
<u>ORO O 350</u>	9/30/98 Chg 1	Chapter VI - Workplace Substance Abuse Programs at Oak Ridge Sites
<u>DOE O 350.1</u>	5/8/98 Chg 1	Contractor Human Resource Management Programs

<u>DOE N 350.5</u>	4/15/99	Use of Facility Contractor Employees for Services to DOE in the Washington, D. C. Area
<u>ORO O 410</u>	12/1/98 Chg 1	Chapter I - Work Authorization System
<u>ORO O 410</u>	9/21/98 Chg 1	Chapter II - Management of Nuclear Materials
<u>DOE O 412.1</u>	4/20/99	Work Authorization System
<u>DOE O 413.1</u>	12/6/95	Management Control Program
<u>ORO O 430</u>	7/7/99 Chg 5	Chapter I - Life Cycle Asset Management
<u>ORO O 430</u>	11/4/98 Chg 1	Chapter II - In-House Energy Management
<u>DOE O 430.1A</u>	10/14/98	Life Cycle Asset Management
<u>DOE O 430.2</u>	6/13/96	In-House Energy Management
<u>ORO O 450</u>	4/9/99 Chg 1	Chapter III - Cultural Resources Management Program
<u>ORO O 470</u>	4/16/99 Chg 1	Chapter I - Safeguards and Security Program
<u>ORO O 470</u>	5/15/96	Chapter IV - Control of Weapon Data
<u>ORO O 470</u>	9/30/96	Chapter V - Identification of Classified Information
<u>ORO O 470</u>	7/23/98 Chg 1	Chapter VII - Protection and Control of Safeguards and Security Interests
<u>ORO O 470</u>	9/28/98 Chg 1	Chapter VIII - Protective Force Program
<u>ORO O 470</u>	5/10/99 Chg 1	Chapter IX - Control and Accountability of Nuclear Materials
<u>ORO O 470</u>	4/23/99 Chg 1	Chapter XI - Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
<u>ORO O 470</u>	7/22/98 Chg 1	Chapter XII - Counterintelligence (CI) Program
<u>DOE O 470.1</u>	6/21/96 Chg 1	Chapter I - Safeguards and Security Program
<u>DOE O 470.2</u>	12/23/98	Safeguards and Security Independent Oversight Program
<u>DOE O 471.1</u>	9/25/95	Identification and Protection of Unclassified Controlled Nuclear Information

<u>DOE O 471.2A</u>	3/27/97	Information Security Program
<u>DOE M 471.1-1B</u>	1/6/99	Classified Matter Protection and Control Manual
<u>ORO N 471.2</u>	4/15/99 Chg 2	Technical Surveillance Countermeasures (TSCM) Program - Use of Telephone Line-man-type Handsets or Items Similar in Purpose, Use, or Effect on DOE-Owned or -Leased Property
<u>DOE O 472.1B</u>	3/24/97	Personnel Security Activities
<u>DOE M 472.1-1</u>	5/22/98	Personnel Security Program Manual
<u>DOE M 473.2-1</u>	8/21/97 Chg 1	Firearms Qualification Courses Manual
<u>DOE M 474.1-2</u>	11/16/98 Chg 2	Nuclear Materials Management and Safeguards System Reporting and Data Submission
<u>DOE M 475.1-1</u>	5/8/98	Identifying Classified Information
<u>DOE O 481.1</u>	9/30/96	Work for Others (Non-Department of Energy Funded Work)
<u>DOE M 481.1-1</u>	9/30/96	Reimbursable Work for Non-Federal Sponsors Process Manual
<u>ORO O 530</u>	9/2/98 Chg 1	Chapter III - Accounting
<u>DOE O 534.1</u>	9/29/95	Accounting
<u>ORO O 560</u>	8/27/98 Chg 1	Chapter I - Unclassified Computer Security Program
<u>DOE 1240.2B</u>	9/3/92 Chg 1	Unclassified Visits & Assignments by Foreign Nationals
<u>DOE N 1240.2</u>	11/29/93	Unclassified Foreign National Visits and Assignments
<u>DOE N 1240.3</u>	11/29/94	Extension of DOE N 1240.2
<u>DOE 1270.2B</u>	6/23/92	Safeguards Agmt with the Int'l Atomic Energy Agency (IAEA)
<u>DOE 1340.1B</u>	1/7/93	Management of Public Communications & Scientific, Technical, & Engineering Publications
<u>DOE 1350.1</u>	3/26/84 Chg 1	Audio Visual & Exhibits Mgt
<u>DOE 1450.4</u>	11/12/92	Consensual Listening-In to or Recording Telephone/Radio Conversations
<u>DOE 1500.3</u>	7/6/94 Chg 7	Foreign Travel Authorization
<u>DOE 2030.48</u>	5/18/92	Reporting Fraud, Waste, & Abuse

<u>DOE 2100.8A</u>	1/27/93	Cost Accounting, Cost Recovery, & Interagency Sharing of Info Tech Facilities
<u>DOE 2110.1A</u>	5/18/92 Chg 2	Pricing of Departmental Materials & Services
<u>DOE 2300.1B</u>	6/8/92	Audit Resolution & Follow-up
<u>DOE 2320.1C</u>	5/18/92	Cooperation with the Office of Inspector General
<u>DOE 2320.2B</u>	5/18/92	Establishment of Departmental Position On Inspector General Reports
<u>DOE 2321.1B</u>	5/14/92	Auditing of Programs & Operations
<u>DOE 2340.1C</u>	6/8/92	Coordination of General Accounting Office Activities
<u>ORIG 4300.2B</u>	12/23/92	Non-DOE Funded Work
<u>DOE 5560.1A</u>	5/8/85	Priorities & Allocations Program
AL 56XB	2/1/92 REV 1	Development and Production Manual
<u>DOE 5610.2</u>	9/2/86 Chg 1	Control of Weapons Data
<u>AL SD 5610.12</u>	8/17/95	Packaging and Offsite Transportation of Nuclear Components, and Special Assemblies Associated with the Nuclear Explosive and Weapon Safety Program
<u>DOE 5630.12A</u>	6/23/92	Safeguards & Security Inspection & Assessment Program
<u>DOE 5631.2C</u>	2/17/94 Chg 2	Personnel Security Program
<u>DOE 5632.1C</u>	7/15/94	Protection and Control of Safeguards and Security Interests
<u>DOE M 5632.1C-1</u>	7/15/94	Manual for Protection and Control of Safeguards and Security Interests
<u>DOE 5632.7A</u>	2/13/95 Chg. 1	<i>Protective Force Program</i>
<u>DOE 5633.3B</u>	9/7/94	Control and Accountability of Nuclear Materials
<u>DOE M 5639.6A-1</u>	7/15/94	Manual of Security Requirements for the Classified Automated Information System Security Program
<u>DOE 5639.8A</u>	7/23/93	Security of Foreign Intelligence Info & Sensitive Compartmented Info Facilities
<u>DOE 5660.1B</u>	5/26/94	Management of Nuclear Materials
<u>DOE 5670.1A</u>	1/15/92	Management and Control of Foreign Intelligence

DOE 5670.3	9/4/92	Counterintelligence Program
	6/30/80	Chapter X - Product Cost Accounting; Accounting Practices and Procedures Handbook

Standards/Requirements Identification Document (S/RID)

Chapter Number	Functional Area	Revision	ORO Approval Date
1.0	Management Systems	5	08/10/99
2.0	Quality Assurance	3	06/31/96
3.0	Configuration Management	2	08/23/96
4.0	Training and Qualification	3	02/10/99
5.0	Emergency Management	4	03/16/99
9.0	Operations	2	03/16/99
10.0	Maintenance	2	09/15/96
11.0	Radiation Protection	2	07/04/96
12.0	Fire Protection	3	04/23/98
13.0	Packaging and Transportation	4	03/01/99
14.0	Environmental Restoration	2	05/20/99
18.0	Facility (Nuclear) Safety	6	04/28/99
19.0	Occupational Safety and Health	3	03/12/99
20.0	Environmental Protection	4	08/19/99

Work Smart Standards (WSS) - <http://w.yl2.doe.gov/srid/ecwss.html>

Functional Area	Approved by ORO Date
Engineering Design and Construction	3/25/97

**SECTION J
LIST OF ATTACHMENTS**

**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 BWXT Technologies Inc. on April 24.2000

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ATTACHMENT F
PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of: and in order to induce the United States (the Government) to enter into Contract DE-AC05-00OR22800 for the management and operation of the Y-12 Plant (the "Contract") dated, _____, by and between the Government and BWXT Y-12, LLC (Contractor), the undersigned, Bechtel National, **Inc.** (Guarantor), a corporation incorporated in the State of Nevada, with its principal place of business at 45 Fremont Street, San Francisco, California 94105, hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, **and/or** as a result of the enforcement or attempted enforcement by the Government of any of its **rights** against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or **consolidation** of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of **all** or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor **as a bankrupt**, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other **document(s)** or **instrument(s)** executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and **direct**, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other **document(s)** or **instrument(s)** executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this **Performance** Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other **document(s)** or **instrument(s)** executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any **successor(s)** to its interests regardless of (i) the reorganization, merger,

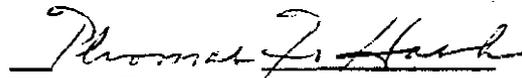
or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor. or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, bylaws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

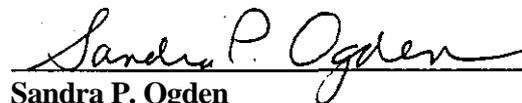
In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer and its corporate seal to be affixed hereto on

BECTHEL NATIONAL, INC.



Thomas F. Hash
President
BECHTEL NATIONAL, INC.
GUARANTOR OF BWXT Y-12, LLC

I, Sandra P. Ogden, certify that I am the Secretary of Bechtel National, Inc.; that T.F. Hash who signed this certificate on behalf of Bechtel National, Inc. was then President of said corporation; that said certificate was duly signed for and in behalf of said corporation.



Sandra P. Ogden
Principal Vice President and Secretary
BECHTEL NATIONAL, INC.

PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AC05-00OR22800 for the management and operation of the Y-12 Plant (the "Contract") dated _____, 2000, by and between the Government and BWXT Y-12, LLC (Contractor), the undersigned, BWX Technologies, Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at Lynchburg, VA hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or **contingent**, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, **and/or** as a result of the enforcement or attempted enforcement by the **Government** of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other **document(s)** or **instrument(s)** executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other **document(s)** or **instrument(s)** executed by Contractor, or **otherwise**. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement

against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

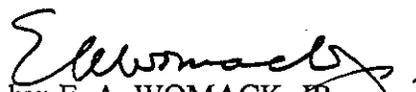
Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on 24 April, 2000.

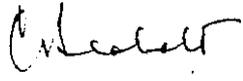
BWX TECHNOLOGIES, INC.


by: E. A. WOMACK, JR.,
PRESIDENT, BWX TECHNOLOGIES, INC.

CERTIFICATE

I, Charles F. Seabolt, certify that I am the Assistant Secretary of the corporation named as Guarantor herein; that who signed this certificate on behalf of the Guarantor, was then President and a Director of said corporation; that said certificate was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Corporate Seal)



(Signature)

27 April 2000
(Date)

**SECTION J
LIST OF ATTACHMENTS**

**ATTACHMENT G
WORK AUTHORIZATION DIRECTIVES**

(TO BE NEGOTIATED AFTER CONTRACT AWARD)

The Work Authorization Directives required by the clause entitled, "Work Authorization System," in Section H will be Attachment G of the contract.

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**SECTION J
LIST OF ATTACHMENTS**

**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, BWXT Y-12
Offer. Page J-1**

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