AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE 1 OF 3 PAGES

2. AMENDMENT/MODIFICATION NO.: 014

3. EFFECTIVE DATE: See Block 16C

4. REQUISITION/PURCHASE REQ. NO.:

5. PROJECT NO. (If applicable):

6. ISSUED BY CODE 03001

EMCBC
U.S. Department of Energy
EM Consolidated Business Center
250 E. 5th Street, Suite 500
Cincinnati OH 45202

7. ADMINISTERED BY (If other than Item 6) CODE 03003

EMCBC - Carlsbad
U.S. Department of Energy
Carlsbad Project Office
P.O. Box 3090
Carlsbad NM 88221

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

NUCLEAR WASTE PARTNERSHIP LLC
Attn: Marty Gonzales
Nuclear Waste Partnership
106 Newberry Street SW
Aiken SC 29801

CODE 968993910 FACILITY CODE

(x) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

x 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-EM0001971

10B. DATED (SEE ITEM 13) 04/20/2012

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a)(3) Mutual agreement of the parties
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not. ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to revise Sections H and I of the contract by incorporating the EM-specific clause for conference activities in Section H and incorporating five sustainability clauses that were not in the award document into Section I. See pages 2-3

Period of Performance: 10/01/2012 to 09/30/2017

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print): M. F. Sharif, Project Manager

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print): Vicki D. Snow

15B. CONTRACTOR/OFFEROR: Exemption 6 (Signature of person authorized to sign)

15C. DATE SIGNED: 3-21-13

16B. UNITED STATES OF AMERICA: Exemption 6 (Signature of contracting officer)

16C. DATE SIGNED: 4/17/13

NSN 7540-01-152-8070
Previous edition unusable

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

The following changes are made to the contract:

1. **SECTION I Changes – Add Sustainability Requirements that were not included in the award document.** In accordance with the memo from J. E. Surash, HCA, titled "Sustainability Requirements in Contracts" dated February 14, 2012, the following table of sustainability requirements are to be incorporated in all M&O contracts.

   The contract award document contained all but five of the sustainability clauses. The five clauses marked with an asterisk and shown in bold type are incorporated into the contract into Section I. The four FAR clauses are incorporated by reference and the DEAR clause is provided in full text. Revised Section I is attached to this modification.

SUSTAINABILITY REQUIREMENTS IN CONTRACTS

FAR CLAUSES

52.223-2*	**Affirmative Procurement of Biobased Products Under Service and Construction Contracts (DEC 2007)**
52.223-5	Pollution Prevention and Right-to-Know Information with Alternate I
52.223-10	Waste Reduction Program
52.223-15*	**Energy Efficiency in Energy-Consuming Products (DEC 2007)**
52.223-16*	**IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, Alternate I (DEC 2007)**
52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
52.223-19*	**Compliance with Environmental Management Systems (MAY 2011)**

DEAR CLAUSES

970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management
970.5223-7*	**Sustainable Acquisition Program (OCT 2010)**

DOE ORDER

O. 436.1	Department Sustainability

2. **SECTION H Changes - Add EM-Specific Clause for Conference Related Activities.**

   In accordance with the DOE memo from J. E. Surash, HCA, titled "Updated Guidance on Conference-Related Activities and Spending," dated February 12, 2013, the following clause is required in M&O contracts within 30 days of the date of the memo. Accordingly, Section H of the contract is revised to incorporate the following clause as H.54. Revised Section H is attached to this modification.

   H.54 Report and Approval Requirements for Conference Related Activities

   The contractor is required to report and obtain approval from the contracting officer before incurring any costs associated with conference related activities. Conference expenses are defined as follows:

Conference expenses are defined as all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to contractors, travelers or others associated with the conference, but do not include funds paid under Federal grants to

grantees. Conference expenses include any associated authorized travel and per diem expenses, rental of rooms for official business, audio-visual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the Federal Travel Regulations (FTR). All outlays for conference preparation and planning should be included, but employee time for conference preparation should not be included. The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301-74.2. Conference expenses should be net of any fees or revenue received by the agency or contractor through the conference.

3. Contractor's Statement of Release (FAR 43.204):

In consideration of the modification agreed to herein as a complete equitable adjustment for the no-cost change confirmed by this modification, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to this modification, with no exceptions.

PART I –THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

Table of Content

H.1	**REPRESENTATIONS AND CERTIFICATIONS**	1
H.2	**MODIFICATION AUTHORITY**	1
H.3	**NO THIRD PARTY BENEFICIARIES**	1
H.4	**WORKFORCE TRANSITION**	1
H.5	**EMPLOYEE COMPENSATION: PAY AND BENEFITS**	2
H.6	**WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES**	12
H.7	**POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**	16
H.8	**TRANSITION ACTIVITIES**	17
H.9	**KEY PERSONNEL**	18
H.10	**TECHNICAL DIRECTION - DEAR 952.242-70 (DEC 2000)**	19
H.11	**SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**	20
H.12	**ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS**	20
H.13	**AUTHORIZATION AND CONSENT – RESEARCH AND DEVELOPMENT SUBCONTRACTS**	20
H.14	**SEPARATE CORPORATE ENTITY**	20
H.15	**RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS**	21
H.16	**PERFORMANCE GUARANTEE**	22
H.17	**RECOGNITION OF PERFORMING ENTITY**	22
H.18	**ACCOUNTING FOR PERFORMING ENTITY**	23
H.19	**HOME OFFICE EXPENSES**	23
H.20	**SEGREGATION OF COSTS**	23
H.21	**APPROVAL OF EXPENDITURES**	23
H.22	**REPORTING REQUIREMENTS (M004)**	24
H.23	**WORK AUTHORIZATION**	27
H.24	**WITHDRAWAL OF WORK**	28
H.25	**PERFORMANCE EVALUATION AND MEASUREMENT PLAN (PEMP)**	28
H.26	**EMPLOYEE CONCERNS PROGRAM (ECP)**	29
H.27	**ENVIRONMENT, SAFETY, AND HEALTH (ES&H)**	29
H.28	**ENVIRONMENTAL PERMITS AND APPLICATIONS**	29
H.29	**PRICE-ANDERSON AMENDMENTS ACT (PAAA) NONCOMPLIANCE**	30
H.30	**CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES**	31
H.31	**PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA**	31
H.32	**DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE**	31
H.33	**GOVERNMENT-OWNED PROPERTY AND EQUIPMENT**	32

H.34	**UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**	32
H.35	**PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN WIPP**	32
H.36	**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**	32
H.37	**CONFIDENTIALITY OF INFORMATION**	33
H.38	**TRAVEL RESTRICTIONS**	34
H.39	**LOBBYING RESTRICTIONS**	34
H.40	**LITIGATION MANAGEMENT PROCEDURE**	34
H.41	**INFORMATION TECHNOLOGY (IT)**	34
H.42	**LABOR RELATIONS**	36
H.43	**DEPARTMENT OF LABOR WAGE DETERMINATIONS**	37
H.44	**RECORDS MANAGEMENT**	37
H.45	**ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)**	40
H.46	**SALE OF PERSONAL PROPERTY**	41
H.47	**CONTRACTOR COMMUNITY COMMITMENT**	41
H.48	**COMPLIANCE WITH INTERNET PROTOCOL, VERSION 6 (IPv6), IN ACQUIRING INFORMATION TECHNOLOGY (IT) (M004)**	43
H.49	**TRANSITION TO FOLLOW-ON CONTRACT**	43
H.50	**PARTNERING**	44
H.51	**INSURANCE – WORK ON A GOVERNMENT INSTALLATION**	44
H.52	**DOE-H-1005 WORKER'S COMPENSATION INSURANCE**	45
H.53	**NNSA/EM STRATEGIC SOURCING PARTNERSHIP (M004)**	45
H.54	**REPORT AND APPROVAL REQUIREMENT FOR CONFERENCE RELATED ACTIVITIES (M014)**	45

PART I –THE SCHEDULE

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

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

H.2 MODIFICATION AUTHORITY

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

(a) Accept nonconforming work;

(b) Waive any requirement of this contract; or

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

H.3 NO THIRD PARTY BENEFICIARIES

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This clause is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.4 WORKFORCE TRANSITION

(a) Right of First Refusal. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph H.4(c) who, as of the date of contract award, hold regular appointments and are engaged in performance of work within the scope of work under this contract**.**

(b) Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the right of first refusal set forth in paragraph (a) above is not applicable to Incumbent Management Employees as defined in paragraph (d) below. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.

(1) For those positions listed above, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.

(c) Incumbent Employees are defined as employees who hold regular appointments excluding incumbent management personnel as defined in paragraph (d) below with Washington TRU Solutions (WTS) as of the effective date of the award of this contract. Individuals who hold

regular appointments are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.

(d) Incumbent Management Employees are defined as WTS management personnel that are currently in first and second level managers in the WTS management organization and above. Incumbent Management Employees hired by the Contractor shall be paid salaries commensurate with the position and duties as determined by the Contractor and in accordance with this contract.

(e) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

H.5 EMPLOYEE COMPENSATION: PAY AND BENEFITS

(a) Contractor Employee Compensation Plan

The Contractor shall submit in accordance with Contract Clause H.6, but no later than 30 days before the end of transition a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; Compensation for Personal Services (Total Compensation System). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

(d) Reports and Information

The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and

structure movements for each pay structure showing actual against approved amounts.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of contract award, and at the time of any subsequent change to their total cash compensation. This should be the same information provided to the Central Contractor Registration (CCR) per FAR 52.204-10.

(3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.

(4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.

(e) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Incumbent Employees as defined in Clause H.4(a) and (c).

(A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by Washington TRU Solutions for at least the first year of the term of the contract.

(B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Washington TRU Solutions. Comparability of the total benefit package for purposes of reimbursement under this contract shall be determined by the CO in his/her sole discretion. Incumbent Employees, including incumbent management personnel that are hired by the Contractor shall remain in their existing pension plans , Washington TRU Solutions Pension Plan (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

(2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with contract requirements.

(3) Cash Compensation

(A) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:

(i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.

(ii) Any proposed major compensation program design changes prior to implementation.

(iii) An Annual Compensation Increase Plan (CIP).

(iv) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.

(v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(B) The Contracting Officer's approval of individual compensation actions will be required only for the Project Manager, Operations Manager, Central Characterization Program Manager, Chief Financial Officer and all other named key personnel, as identified by the Contracting Officer.

(C) Severance Pay is not payable to an employee under this contract if the employee:

(i) Voluntarily separates, resigns or retires from employment,
(ii) Is offered employment with a successor/replacement Contractor,
(iii) Is offered employment with a parent or affiliated company, or
(iv) Is discharged for cause.

(D) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(f) Pension and Other Benefit Programs

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.

(2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved Employee Benefits Value Study and an Employee Benefits Cost Survey Comparison as described below.

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.

(A) An Employee Benefits Value Study (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

(B) An Employee Benefits Cost Study Comparison, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

(4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval.

(5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.

(6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

(7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.

(8) The Contractor may not terminate any benefit plan during the term of the contract without the prior approval of the Contracting Officer in writing.

(9) Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

(1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.

(2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.

(3) Employees working for the Contractor shall only accrue credit for service under this contract after the date of contract award.

(4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.

(h) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts. Pension Plans include Defined Benefit and Defined Contribution plans.

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance.

(2) Except for Commingled plans in existence as of the effective date of this contract, each pension plan covering Contractor employees at designated DOE and Contractor facilities shall be a separate pension plan as defined below. When appropriate, Commingled plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(3) DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.

(4) DOE approval is required for each newly adopted pension plan or for any changes to Commingled pension plans or Taft-Hartley pension plans.

(5) Each Contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to DOE, must provide the accounting details specified in ERISA Sections 103 and 104.

(6) For existing Commingled plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.

(7) For existing Commingled plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.

(8) The Contractor shall comply with the requirements of ERISA and any other applicable laws to the fullest extent practical, even if a specific pension plan is exempt from ERISA.

(9) Proposed pension plan changes will be evaluated by DOE, with approval/disapproval based on the merits of each proposed change, including but not limited to evaluation of the following:

(A) Total compensation.

(B) Pension benefit surveys published by the Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

(C) Retirement studies published by consulting firms, educational institutions, or policy groups.

(D) Software models developed by qualified actuaries.

(10) The Human Resources Management Plan shall include the following:

(A) A Pension Management Plan (PMP) discussing the Contractor's plans for management and administration of all pension plans consistent with the terms of this contract. The PMP shall be updated and submitted to the Contracting Officer in draft annually no later than 45 days after the last day of the Plan year along with its draft actuarial valuation.

(B) Within thirty (30) days after the date of the submission, appropriate Contractor representatives shall meet with the Contracting Officer to discuss the Contractor's proposed draft annual update of the PMP to specifically discuss any anticipated changes in the projected pension contributions from the prior year's contributions and any discrepancies between the actual contributions made for the most recent year preceding that meeting and the projected contributions for that year which the Contractor had submitted to the Contracting Officer the prior year. The annual revision of the PMP shall include:

(i) The Contractor's best projection of the contributions which it will be legally obligated to make to the pension plan(s), beginning with the required contributions for the coming fiscal year, based on the latest actuarial

valuation, and continuing for the following four years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the plan document(s).

(ii) If the actuarial valuation submitted pursuant to the annual PMP update indicates that the sponsor of the pension plan must impose pension plan benefit restrictions, the Contractor shall provide the following information:

(aa) The type of benefit restriction that will take place,
(bb) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction, and
(cc) The amount of money that would need to be contributed to the pension plan to avoid legally required benefit restrictions.

(iii) A detailed discussion of how the Contractor intends to manage the pension plan(s) to maximize the contribution predictability (i.e., forecasting accuracy) and contain current and future costs, to include rationale for selection of all plan assumptions that determine the required contributions and which impact the level and predictability of required contributions. The Contractor is required to annually establish a long term (e.g. five year) plan that outlines the projected retirement plan costs, and any planned action steps to be taken to better manage predictability. The Contractor must also share the following information with the Department during the meeting:

(aa) Strategy for achieving and maintaining fully-funded status of the plan(s)
(bb) Investment policy statement for the plan, with any recent updates
(cc) Results of recent asset liability studies (required to be preformed every 3 years or after a significant event) including rational for maintaining current asset allocation strategy.
(dd) Comparison of budget projections submitted to the Department to actual contributions
(ee) Any recent reports, findings, or recommendations provided by plan's investment consultant.
(ff) Actuarial experience studies to set the plan's actuarial assumptions (required to be performed every 3-5 years)

(iv) An assessment to evaluate the effectiveness of the Contractor's pension plan(s) investment management/results. The assessment shall include at a minimum: a review and analysis of pension plan investment objectives; the strategies employed to achieve those objectives; the methods used to monitor execution of those strategies and the achievement of the investment objectives; and a comparative analysis of the objectives and performance of other comparable pension plans. The Contractor shall also identify its plans, if any, for revising any aspect of its pension plan management based on the results of the review.

(11) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan

that provides credit for service not performed under a DOE cost-reimbursement contract.

(i) Reimbursement of Contractors for Contributions to Defined Benefit Pension Plans

(1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.

(2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer.

(j) Reporting Requirements for Designated Contracts

The following reports shall be submitted to DOE as soon as possible after the last day of the plan year by the Contractor responsible for each designated pension plan funded by DOE but no later than the dates specified below:

(1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filling IRS Form 5500.

(2) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(3) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(k) Changes to Pension Plans

At least sixty (60) days prior to the adoption of any changes to benefits, plan design, or funding methods for a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Management Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;

(B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs;

(C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;

(D) the Summary Plan Description; and,

(E) any such additional information as requested by the Contracting Officer.

(2) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of such special programs and other changes on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

(3) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:

(A) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,

(B) provide the dollar estimate of savings or costs, and

(C) provide the basis of determining the estimated savings or cost.

(l) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

(1) No further benefits for service shall accrue.

(2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.

(3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. Insurance companies bidding for such business shall satisfy Department of Labor requirements.

(4) Assets shall be determined using the accrual-basis market value on the date of termination of operations.

(5) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all DOE assets assigned to a spun-off or terminating plan shall be placed in a high-yield, fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's AA.

(m) Terminating Plans

(1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.

(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards. Otherwise, the Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

(3) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.

(4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.

(5) On the same day as the contractor notifies the IRS of the plan termination, all DOE assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan’s liabilities. The portfolio shall be rated no lower than Standard & Poor's AA.

(6) DOE liability to a commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.

(7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.

(n) Special Programs

Contractors must advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

(o) Definitions

(1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.

(2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

(3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

(4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.

(5) Designated Contract. For purposes of this Order, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.

(6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

(7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service.

NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.

(8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under the DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

(9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a plan termination basis.

H.6 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES

(a) Workforce Transition Plan. In addition to the required Transition Plan and other requirements under the Clauses H.4 through H.8 of this contract, the Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor’s plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.4, Workforce Transition and Employee Hiring Preferences, and this Paragraph (a). Notwithstanding timeframes identified elsewhere in the contract, the Contractor shall perform the following activities in the following specified timeframes:

(1) Within ten days after written notice to proceed, the Contractor shall:

(A) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the incumbent contractor (WTS) to ensure compliance with Clause H.4 during the first 90 days after written notice to proceed;

(B) Submit to the Contracting Officer a written communication plan developed by the Contractor that details the communication that the Contractor and its subcontractors will engage in with the incumbent contractor, WTS, regarding implementation of the hiring preference requirements set forth in Clause H.4; and

(C) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified.

(D) Obtain information from the incumbent contractor, WTS, identifying the incumbent employees as defined in H.4(c). Provide and define a process as part of the transition agreements required in paragraph (1)(A) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the incumbent employees as defined in H.4(c).

(2) Within 15 days after written notice to proceed, the Contractor shall:

(A) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clause H.4 and how it has identified the Incumbent Management Personnel as defined in Clause H.4(d); and

(B) Establish and enter into the written communication plan with the WTS Contractor regarding the implementation of the hiring preferences in Clause H.4 and provide a copy to the Contracting Officer.

(3) Within 30 days after written notice to proceed, the Contractor shall provide to the Contracting Officer copies of the final Workforce Transition Plan and the draft transition agreements it proposes to enter into consistent with requirements of Clauses H.4.

(4) Within 60 days after written notice to proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in above.

(5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H. 4 in accordance with the timeframes set forth below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.

(A) During the 90 day Contract Transition Period, such reports shall be provided to the Contracting Officer on a weekly basis; or

(B) Earlier, if requested by the Contracting Officer.

(b) Benefits Transition.

The Contractor shall submit a written draft Benefits Transition Plan within 20 days after written notice to proceed describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.5, Employee Compensation: Pay and Benefits, and this Paragraph (b). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after written notice to proceed. All transitions of the existing pension plan(s) and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after written notice to proceed.

(1) The Contractor shall perform the following activities within the specified timeframes:

(A) Within ten days after written notice to proceed, the Contractor shall:

(i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transitioning of the existing pension plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring that the Contractor becomes a sponsor of the Washington TRU Solutions Pension Plan within the required timeframe and contact information for the above personnel;

(ii) Request the incumbent contractor, WTS, to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this contract pertaining to sponsorship of the Washington TRU Solutions Pension Plan and other existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the 90-day Transition Period; and

(iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.

(B) Within 15 days after written notice to proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from the incumbent contractor, WTS, pertaining to the transition of the WTS Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from the incumbent Contractor, WTS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this contract, including the timeframes set forth in this clause and the requirements in Clause H,4, Workforce

Transition and Employee Hiring Preferences, and Clause H.5, Employee Compensation: Pay and Benefits.

(C) Within 20 days of written notice to proceed, the Contractor shall:

(i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.5 including requirements pertaining to the transition of employee benefit plans; and

(ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the WTS Pension Plan. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clause H.5 Employee Compensation: Pay and Benefits, including execution of transition agreements with the incumbent contractor, WTS, and other applicable entities. The minutes of the meeting as well as a written description of any substantive issues identified at the meeting shall be submitted to the Contracting Officer within two days after the meeting.

(D) Within 30 days after written notice to proceed and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.5, Employee Compensation: Pay and Benefits will be amended or restated on or before the last day of the 90 day Transition Period. If the creation of new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the contract and applicable law governing such transactions.

(E) Within 45 days after written notice to proceed, the Contractor shall:

(i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract regarding employee compensation. The draft Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by WTS, including but not limited to amendments effectuating the change in sponsorship/participating employer in the WTS Pension Plan. If

applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by WTS. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.

(iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.

(iv) Provide draft copies of the transition agreements which the Contractor will enter into with WTS to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.5, Employee Compensation: Pay and Benefits. Copies of these executed transition agreements shall be provided to the Contracting Officer within 45 days.

(F) No later than 60 days after written notice to proceed and prior to the adoption of the documents identified in Paragraphs (B)(1)(e)(ii) and (iii) above, the Contractor shall submit to the Contracting Officer the proposed final versions of these documents for approval.

(G) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.

(2) After the Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:

(A) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this contract, and

(B) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.5, Employee Compensation: Pay and Benefits.

H.7 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

(a) If this contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at Waste Isolation Pilot Project (WIPP) M&O (collectively, the 'Plans'), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer.

(b) If this contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines

that the scope of work under the contract has been completed (any one such event may be deemed by the Contracting Officer to be 'Contract Completion' for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

(1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

H.8 TRANSITION ACTIVITIES

(a) During the transition period, as specified in the clause in Section F entitled “Period of Performance,” the Contractor shall perform those activities that are necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources responsibilities, and accountability from the incumbent Contractor; and (3) provides for the ability of the Contractor to perform the work in an efficient, effective, and safe manner. The Contractor is responsible for providing all necessary personnel and logistical support (office space, computers, telephone, etc.) during the transition period, unless specifically directed otherwise by the CO.

(b) . The Contractor shall submit a transition plan and budget to the CO for approval within 5 days after written notice to proceed.

(c) After completion of the transition activities contained in the approved transition plan and such other transition activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for the work. The Contractor shall assume full responsibility for the work upon the date specified in writing by the CO.

(d) The transition plan shall include a schedule of major activities, and address as a minimum:

- Communication process among the Contractor, incumbent Contractors, site tenants, and DOE;
- Identification of key transition issues and milestones;

- Identification of a transition team (inclusive of consultants and teaming members, if any);
- Integration of work packages (direct and indirect) and budgets from incumbent Contractors;
- Approach to minimizing impacts on continuity of operations;
- Dispute Resolution;
- Assumption of WIPP related programs and projects;
- Comprehensive human resource management as described in clause Section H.5 entitled “Employee Compensation: Pay and Benefits”;
- Implementation of existing or proposed management systems (e.g., Project Management, Integrated Safety Management, General Electronic Data Processing, Budget and Planning, Purchasing Material, Compensation, Labor/Payroll, Indirect and Direct Costs, Property Management, Billing and Estimating);
- Assumption of all ES&H responsibilities, functions, and activities;
- Identification and prioritization of issues after transition; and
- A detailed cost breakdown by transition activity (include cost breakdown as an appendix to the plan).

(e) Contractor agrees that costs identified as transition related costs outside of the transition period shall be specifically identified and approved by the CO.

H.9 KEY PERSONNEL

(a) Unless approved in advance, in writing, by the CO, should any Key Personnel be removed, replaced, or diverted by the Contractor for reasons under the Contractor’s control (other than to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization) within the first two years of performance from the effective date of the contract (SF 33, Block 2); or for a replacement Key Personnel within two years of being placed in the position, the Contractor shall forfeit $500,000 in fee if said Key Personnel is the Project Manager, and $250,000 in fee for each removal, replacement, or diversion of all other key personnel within two years after effective date of the contract or within two years of being placed in the position.

(b) The personnel listed below are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer’s written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor’s Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

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

(d) List of Key Personnel – the individuals listed below are considered Key Personnel for this contract:

Name	**Title**
Farok Sharif	Project Manager
Scott Kennedy	Operations Manager
Tammy Reynolds	Central Characterization Program Manager
Robert Gifford	Chief Financial Officer

H.10 TECHNICAL DIRECTION - DEAR 952.242-70 (DEC 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the

Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

H.11 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

The Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the Contract Clause entitled, “Small Business Subcontracting Plan” and approved by the Contracting Officer is incorporated as an Attachment to Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of Contract Clause entitled “Small Business Subcontracting Plan” (FAR 52.219-9). The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this contract. The Contractor’s performance in meeting the goals will be assessed as part of the award fee determination under this contract.

H.12 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

On October 1, 2012, the Contractor shall assume responsibility for existing contracts and other agreements from Contract Number DE-AC29-01AL66444. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans), and (g) other agreements in effect prior to execution of this contract.

H.13 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 I, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities.

H.14 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.15 RESPONSIBLE CORPORATE OFFICIAL AND CORPORATE BOARD OF DIRECTORS

Responsible Corporate Official

(A) The Contractor has provided a guarantee of performance from its parent(s) company in the form set forth in Section J Attachment entitled, Performance Guarantee Agreement.

(B) DOE may contact, as necessary, the single Responsible Corporate Official from the Contractor signing the Performance Guarantee Agreement. The Responsible Corporate Official identified below shall be at an organizational level above the Contractor and shall have sole corporate authority and accountability for the performance of the contract to resolve any issues with DOE beyond the authority of the Project Manager.

Name: David a. Pethick
Position: Group General Manager
Company/Organization: URS Energy & Construction, Inc.
Address: 106 Newberry Street SW, Aiken, SC 29801
Phone: 803-502-5701
Facsimile: 803-502-5701
Email: david.pethick@urs.com

(C) Should the Responsible Corporate Official change during the period of the contract, the Contractor shall notify the Contracting Officer in writing within 30 days of any change.

The Contractor has provided by name and affiliation each member of the Corporate Board of Directors that will have corporate oversight. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

DOE may contact, as necessary, any member of the Responsible Corporate Board of Directors, who is accountable for corporate oversight of the Contractor organization and key personnel.

Responsible Corporate Board of Directors (information required for each Board Member):

Name: David a. Pethick
Position: Group General Manager
Company/Organization: URS Energy & Construction, Inc.
Address: 106 Newberry Street SW, Aiken, SC 29801

Phone: 803-502-5701
Facsimile: 803-502-5701
Email: david.pethick@urs.com

Name: Robert W. McQuinn
Position: Manager
Company/Organization: URS Energy & Construction, Inc.
Address: 106 Newberry Street SW, Aiken, SC 29801
Phone: 803-502-5754
Facsimile: 803-502-9795
Email: bob.mcquinn@urs.com

Name: Kenneth R. Camplin
Position: Manager
Company/Organization: Babcock & Wilcox Technical Services Group, Inc.
Address: 800 Main Street, Lynchburg, VA 24505
Phone: 434-522-5115
Facsimile: 434-522-5450
Email: krcamplin@babcock.com

Note: The Operating Agreement between URS Energy & Construction, Inc. and Babcock & Wilcox Technical Services Group, Inc. specifies that NWP will be Manager Managed rather than Director Managed. Position titles, therefore, refer to the NWP Board of Manager.

H.16 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 as an Attachment to Section J. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.17 RECOGNITION OF PERFORMING ENTITY

(a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

Offeror:

Nuclear Waste Partnership LLC

Limited Liability Company Members:

URS Energy & Construction, Inc.
Babcock & Wilcox Technical Services Group, Inc.

Major Subcontractor:

AREVA Federal Services, LLC

(b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the CO.

H.18 ACCOUNTING FOR PERFORMING ENTITY

All financial data and planning of the entities comprising the performing entity, as identified in Section H.17 “Recognition of Performing Entity”, shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor’s input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

H.19 HOME OFFICE EXPENSES

Home office expenses, whether direct or indirect, relating to activities of the Contractor are unallowable, except as otherwise specifically provided in the contract or specifically agreed to in writing by the CO. “Contractor” is defined as the performing entity identified in Clause H.17.

H.20 SEGREGATION OF COSTS

(a) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to the incentive arrangement.

(b) If the Contractor has initiated work pursuant to the clause entitled, Cost Reduction, included in this contract, that a proposal has been accepted, the Contractor, for each cost reduction incentive proposal, shall maintain separate accounts, by work authorization directive or other suitable accounting procedure, of all incurred segregable, direct costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Reduction Incentive Proposal.

(c) The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses Access to and Ownership of Records of this contract, but, in no case, for a period of less than three years following the Government's determination of the applicable incentive fee.

H.21 APPROVAL OF EXPENDITURES

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

H.22 REPORTING REQUIREMENTS (M004)

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

(b) A computer based scheduling system that collects and reports periodic costs and related schedule information shall be used by the Contractor. The system shall be compatible with the Department of Energy (DOE) Environmental Management (EM) systems reporting requirements. The system shall be used to collect budget, costs, schedule and other information from all participants funded by the WIPP operation. Budgets, actual and forecasted costs and schedules shall be input in such a manner that proprietary information between companies (i.e., rates) are not shared, or are shared with the appropriate controls (i.e., executing Proprietary Information Exchange Agreements between the parties). All WIPP funded participants shall be required by DOE to input budget, cost and schedule information into the system. Each participant shall be responsible for accountability of performance to and variance from plans.

(c) 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 CO. Such reports are presented by WBS, Project Baseline Summary (PBS) and participant in formats to be determined jointly by the Contractor and the Contracting Officer or representative.

(d) These periodic plans and reports shall be submitted at the interval, to the addresses and in the quantities specified by the CO or representative. Both hard copy and web- based posting are required. Where specific forms are required for individual plans and reports, the CO shall provide such forms to the Contractor. These reports shall primarily derive from the system described in paragraph (b) or be consistent with the information contained therein.

(e) DOE may conduct Earned Value Management System (EVMS) compliance reviews and external independent reviews (EIR) of the Contractor's proposed project control system per DOE Order 413.1B to determine if the description and procedures meet Order requirements as required for capital projects. The Contractor shall be prepared to successfully complete the EIR and to successfully gain Earned Value Management System certification six months after the Contractor receives notice from DOE of a pending capital project that will require EVMS implementation.

(f) Plans and reports shall be prepared by the Contractor in such a manner as to provide for consistency with the contract PWS, the approved WBS, and PBS, the existing accounting structure and in correlation with data among the various plans and reports. The plans and reports expected to be submitted by the Contractor are described generally as follows and are subject to revision at any time by the CO:

(1) A General Management Status Report summarizes scope, schedule, cost status and plans including but not limited to:

(i) Trend reports to include cost (labor, material, overhead) and fees. Typically, performance management baseline reports segregate fee from other costs. Explanations of status cost and schedule variances from plans that are greater than thresholds defined by the CO or COR are required. Analysis of historical data and trends shall also be provided.

(ii) Earned Value Management Reports (if required for capital projects) with information regarding budgeted cost of work scheduled and work performed and actual cost, as well as cost and schedule performance indices, schedule performance against milestones and estimated costs and budgets at completion. “Stoplight” charts showing red, yellow and green indicators for performance shown by WBS, PBS and participants within well defined ranges assist management in assessing the performance against key indicators.

(iii) Periodic Performance Measures including targets and actuals for performance measures, e.g., cubic meters of CH and RH TRU waste certified at generator sites, cubic meters of CH and RH waste disposed, periodic milestones to include WIPP site operations, Central Characterization Project (CCP), Transportation, regulatory and permitting actions.

(iv) Safety metrics such as Days Away Rate (DART) charts, Total Recordable Case Rates, Recordable Incident Rates, and Rolling Averages of such.

(v) Assessment of and continued monitoring of risks against a risk management plan.

(vi) Program Change Request (PCR) summary logs showing the submission and status of all PCR processed during the previous period.

(vii) Other information as recommended by the Contractor, government personnel or other interested parties as determined prudent.

(2) Technical Reports by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

(3) Other types of financial, project or operational reports as deemed necessary.

(g) The Contractor shall schedule a periodic meeting to review the material prepared for the previous period. Meeting notices shall be distributed to provide adequate lead time from publishing the report for the government to review the material. An agenda shall be used, minutes and attendance be taken at each meeting. Records of these meetings and reports

shall be kept during the period of performance of the contract and are subject to review at all times.

(h) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work 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 PWS or Work Authorization Directives (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 Contracting Officer.

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

(2) Reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete 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 re-planning 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. The Contractor shall maintain a record of error corrections and routine accounting adjustments and make available for review by the Government;

(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.

(i) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's cost collection, reporting and other systems including but not limited to invoices, payroll and other financial and planning documents.

(j) 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.

(k) The Contractor shall be familiar with, and be capable of complying with the latest revisions of DOE Policies, Orders, Guides and Manuals series 413, Program and Project Management for Capital Assets.

H.23 WORK AUTHORIZATION

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

(b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at the lowest level of the WBS. Ideally, this budget reflects congressional direction, when available. When not available at the beginning of the fiscal year, this budget shall be set to be equal or less than dollar value of the nearest expected congressional budget. The established description of work, estimated costs, and schedule of performance shall be incorporated into work authorization directives. Work authorization directives, signed by the Contractor and issued by the CO are incorporated by reference into this contract.

(c) If agreement cannot be reached on the scope, schedule, and estimated cost for the work authorization directives, the CO shall issue unilateral work authorization directives pursuant to this clause.

(d) No activities shall be authorized and no costs incurred until either the CO has issued work authorization directives or the CO has issued direction concerning continuation of activities.

(e) The work authorization directives authorizing the Contractor to proceed with performance shall be provided to the Contractor by the CO. Each work authorization directive so issued will include, as a minimum, the following:

- Authorization number and effective date;
- Description of work;
- Cost, schedule, and other reporting requirements including appropriate performance objectives, metrics, schedules, and milestone dates
- Date of issue;
- Contractor’s signature; and
- CO's signature.

(f) Modification of Work Authorization Directives. The CO may at any time and without notice issue changes to the work authorization directives within the PWS 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. This is required upon receipt of annual appropriation in the event of operations under a continuing resolution for any length of time in the current fiscal year.

(g) The Contractor shall notify the CO immediately whenever the cost incurred to date plus the projected cost to complete the work on any work authorization directive is expected to

exceed or under-run the estimated cost by a percentage of the work authorization directive to be determined by the CO (typically 10%). In this case, the Contractor shall submit a proposal for a change in the work authorization directive in accordance with paragraphs (a) and (b) of this clause.

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

(i) Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the 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 subsection.

H.24 WITHDRAWAL OF WORK

(a) The CO reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government Contractor or to have the work performed by Government employees.

(b) DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.

(c) The DOE reserves the right to identify specific work activities in Section C “Performance Work Statement” to be removed (de-scoped) from the contract in order to contract directly for the specific work activities.

(d) If withdrawn work has been authorized under an annual work authorization directive, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement). If work has not been authorized under a work authorization directive and there is no impact on the Contractor’s staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the Clause entitled, Changes – Cost-Reimbursement. If the Contractor’s staffing is impacted, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination (Cost Reimbursement).

(e) If any work is withdrawn by the CO, the Contractor agrees to fully co-operate with the new entity performing the work and to provide whatever support is required pursuant to the Contract Clause in Section H entitled, Technical Direction – DEAR 952.242-70 (DEC 2000).

H.25 PERFORMANCE EVALUATION AND MEASUREMENT PLAN (PEMP)

A PEMP, Attachment C in Section J, developed by the Carlsbad Field Office Manager or the COR, with Contractor input, shall document the process by which the Contractor’s performance will be evaluated in determining the amount of fee earned by the Contractor. The Parties will strive to

reach mutual agreement on expected business, operational and technical performance and will work together to develop performance objectives, performance-based incentives and associated measures and targets tied to key end products and DOE strategic goals and objectives. In the event the parties fail to agree on the requirements, the DOE reserves the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance.

The PEMP shall be finalized, whether bilaterally or unilaterally, prior to the start of an appraisal period. The CO shall transmit the final PEMP to the Contractor. Only the CO may revise the PEMP, consistent with the PWS, during the appraisal period of performance. No changes will be made to the PEMP or associated documents with less than 60 days remaining in the appraisal period. Where the Contractor becomes aware that they will not meet a completion task metric, the Contractor shall notify DOE of its impending failure in order to allow the Government to mitigate the consequences of the impending failure to meet the completion task metric. The Contractor shall not receive fee for any completion task metrics that are not completed in accordance with contract requirements.

H.26 EMPLOYEE CONCERNS PROGRAM (ECP)

The Contractor shall submit an implementation plan to the CO for approval within 90 days of written notice to proceed that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions.

H.27 ENVIRONMENT, SAFETY, AND HEALTH (ES&H)

(a) The Contractor shall comply with the existing system description document in accordance with the I Clause DEAR 970.5223-1 entitled “Integration ES&H into Work Planning and Execution.” The Contractor shall submit an update to the existing Integrated Safety Management System (ISMS) Description Document within 60 days of written notice to proceed and thereafter each year on September 1, for the following fiscal year. Any changes to the ISMS Description Document after the CO’s or designee’s initial approval, shall be approved by the CO or designee.

(b) The initial update of the ISMS Description Document shall include any revisions to ES&H Plans/Programs (i.e., Radiation Protection Plan, Worker Safety and Health Program, etc.) and include interfaces with other equivalent plans/programs (i.e., Quality Assurance Plan) approved by DOE as required by the clause entitled Laws, Regulations, and DOE Directives.

(c) This contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the CO to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to CO approval.

H.28 ENVIRONMENTAL PERMITS AND APPLICATIONS

(a) In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor shall sign Resource Conservation and Recovery Act (RCRA) permits and applications as co-operator. DOE shall sign RCRA permits and applications as co-operator and owner if such signature is required by law or Regulatory Agency. The Contractor and other Site Contractors shall sign all other permits and applications as required by law or Regulatory Agency.

(b) To clarify the resulting obligations under the contract, the parties agree to the following:

(1) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the contract by reason of the Contractor's execution of environmental permits.
(2) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
(3) 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.

(c) The Contractor will be responsible for interfacing with other Site Contractors, as appropriate, when it pertains to permit applications, environmental monitoring, and environmental reporting. DOE will be fully integrated into these processes. Environmental monitoring, reporting, inspection, and control requirements will be defined in either the facility-specific permits issued by the state or in site-wide DOE-approved plans.

(d) The Contractor will be responsible for reviewing and approving deliverables related to site-wide permits, permit-related plans, and exemption packages developed pursuant to State and Federal environmental regulations, and for forwarding the applications to the state for final approval, as appropriate. For each permit associated with this work-scope, the Contractor will perform the necessary calculations, prepare required reports, design drawings and application forms, and submit the documentation to DOE for review and, when applicable, approval.

(e) The Contractor shall sample all release and emission points, as defined in the applicable permits or as directed by DOE, to support environmental monitoring programs. The Contractor shall monitor impacts on site-wide environmental media. The Contractor shall ensure that environmental monitoring data is collected pursuant to standards and procedures stipulated in the permit and/or applicable regulations. The Contractor shall ensure that all analytical data is collected and analyzed according to applicable methods and standards, and that field and laboratory quality controls and measures are implemented according to applicable standards stipulated in the facility permit. The Contractor shall provide to DOE environmental monitoring data to support operating permits, for which the Contractor has responsibility.

H.29 PRICE-ANDERSON AMENDMENTS ACT (PAAA) NONCOMPLIANCE

The Contractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price- Anderson Amendments

Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.30 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION(S) AND FINES AND PENALTIES

(a) The Contractor shall accept, in its own name, notices of violation(s) (NOV) and fines and penalties if issued directly to the Contractor by Federal or State regulators 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 governed by the provisions of the Section I Contract Clause DEAR 970.5232-2 entitled, Payments and Advances. The Contractor shall notify the CO promptly when it receives service from the regulators of NOVs and fines and penalties. If an NOV or a fine/penalty is provided to the Contractor and the Contractor is not responsible for the cited function under this contract, the Contractor shall immediately notify the Government and the regulator. Any NOVs, fines or penalties associated with any act or failure to act before the Contractor assumed responsibility for the site shall be processed in accordance with the Contract Clause entitled, Pre-existing Conditions.

(b) The Contractor shall be free to conduct negotiations with regulators regarding NOVs, fines and penalties issued directly to the Contractor; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the CO or his 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.

H.31 PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Any possible violation of the prohibition against falsely labeling products as made in America, and the entity is not on the List of parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the Contracting Officer. The DOE Contracting Officer is responsible for reporting of an entity in violation of the prohibition against falsely labeling products as American-Made to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

H.32 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE

In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for design, construction, operation, cleanup and closure

activities associated with the PWS, subject to the Rights in Data - Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for design, construction, and operation activities associated with the WIPP PWS. Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, and operation activities associated with the PWS, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future Contractors for the design, construction, and operation activities associated with the PWS. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed. In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the design, construction, and operation activities associated with the PWS to DOE or such other third party as DOE may designate. The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H.33 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On October 1, 2012, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC29-01AL66444.

H.34 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.35 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN WIPP

When performing work under this contract at DOE facilities and sites other than the Waste Isolation Pilot Plant (WIPP), the Contractor shall comply with and follow the List of Applicable Directives in Section J Attachment of the contract. In addition, the Contractor shall comply with any additional directives which have been established for the DOE Prime Contractor at the DOE facility/site and that are applicable to the work being performed and to associated hazards at the particular facility or site.

H.36 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.37 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 or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

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

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

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

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

(b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information 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 information data it is given access to or is furnished, restricting use and disclosure of 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.

(f) Technical data is addressed in DEAR 970.5227-1.

H.38 TRAVEL RESTRICTIONS

(a) 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.

The definitions of lodging, meals, and incidental expenses, and special or unusual situations of the above regulations are applicable to Contractor travel.

(b) 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.39 LOBBYING RESTRICTIONS

(a) The Contractor shall not commit any funds obligated on this award to 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 applicable statute and regulation.

(b) Any travel associated with legislative monitoring must be approved in advance by the CO.

H.40 LITIGATION MANAGEMENT PROCEDURE

(a) As required in the clause entitled “Recognition of Performing Entity” in Section H.17, the Contractor shall prepare a Management of Litigation Procedure(s) which shall be submitted to the CO or designee for approval within 60 days after the award of the contract, and shall be updated thereafter as required.

(b) The CBFO Counsel is the authorized designee of the CO for approval of this Plan.

(c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved Contractor legal management procedure(s) (including cost guidelines) as such procedure(s) may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

H.41 INFORMATION TECHNOLOGY (IT)

All information produced in support of this contract is deemed the property of the government and must be processed and protected, commensurate with risk, in compliance with government laws, Office of Management and Budget (OMB) mandates, and departmental policy.

Cyber Security

The Contractor shall develop a Cyber Security Program to meet the requirements DOE Order 205.1B – Department of Energy Cyber Security Management Program and the Environmental Management Program Security Plan.

The Contractor shall evaluate the Information System or Systems it will operate or develop in accordance with FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION FIPS 199, Standards for Security Categorization of Federal Information and Information Systems. The determination of the system categorization shall be approved by the Contracting Officer. This categorization will determine the level of controls required in the development of the Contractor's cyber security program. Along with submittal of the System Categorization, the Contractor shall develop and submit a Computer Security Threat and Vulnerabilities Statement and Computer Security Risk Assessment and Mitigation Document within 90 days of written notice to proceed. Additional deliverable requirements will be based on these documents.

Based on the System Categorization the Contractor shall develop a System Security Plan in accordance with the Under Secretary of Energy's Program Cyber Security Plan and the Environmental Management Program Security Plan. The Contractor shall implement the Management, Operational, and Technical Controls specified in these documents.

Authorization to Operate:

The DOE will notify the Contractor of the appointment of a Designated Approval Authority (DAA). The DAA will authorize the full implementation of the Contractor's IT systems. The Contractor will be subject to the reviews and system testing described in the requirements and the results of these will be presented to the DAA for review. If the results of the review are satisfactory, the DAA may issue declaration of an "Authority to Operate" (ATO) which will allow the Contractor to fully operate their IT systems within a specified time. The ATO will also specify the provisions for the continuous monitoring of the Contractor's IT Systems. If the Contractor's systems are not fully compliant but do meet the minimum standard for operations, the DAA may issue conditions, terms, or limitations on the operations of the Contractor's IT systems until they are fully compliant. These will be specified in the ATO.

If the results of the reviews and system test are not satisfactory, the DAA may deny or rescind a previous ATO with a Denial of Authorization to Operate (DATO). If the DAA issues a DATO, all costs associated with any mission delay will be the responsibility of the Contractor.

Risk Portfolio Manager:

EM's Risk Portfolio Manager (RPM) is an application developed by Environmental Management to standardize the development of IT system accreditation packages that support the DAA's decision in issuing an ATO. RPM is a central repository for cyber security documentation and Plans of Actions and Milestones (POA&M). RPM is pre-

populated with DOE cyber security control requirements and will assist the Contractor in the development of required cyber security documentation. It will be the enterprise central repository for all required Certification and Accreditation (C & A) documents and artifacts. OMB requires that agencies upload information electronically to OMB. RPM is used to meet this requirement. The Contractor will be given access to the system and is required to provide updates in a timely manner.

Monitoring of IT Networks/Systems:

The Federal Government, the Department of Energy, and the Office of Environmental Management may monitor Contractor networks/systems used to conduct the EM mission for malicious activity and performance measures at any time. Hardware and software may be deployed on Contractor networks for this purpose. The installation, support and response to issues developed from these systems are within the scope of this contract.

Enterprise Architecture:

Federal law requires that agencies develop and document an Enterprise Architecture (EA). The architecture encompasses the missions and business processes that support each mission. The Contractor shall develop an Enterprise Architecture that describes the Contractor's IT systems in accordance with DOE Order 200.1A. All Federal IT investments are documented within the budget process by a form Exhibit 53 or form Exhibit 300, in accordance with OMB criteria. As part of the Enterprise Architecture, the Contractor shall develop an application inventory which is mapped to the appropriate Exhibit 53 and 300. The Contractor shall be required to provide data and information in support of developing the Exhibit 53 and or Exhibit 300 documentation.

EM utilizes an online system that the Contractor may be required to log on to and provide specific budget and cost data. Costs accumulated in association with IT and Cyber Security must be identified as such and be identifiable from a contract management perspective. See the specific sections of OMB Circular No. A-11 for further information or clarification of Exhibits 53 and 300.

Other Requirements:

The DOE orders and Program Cyber Security Plan provide for development of Policies, Procedures or Instructions to documents supporting the Cyber Security Program. These documents may be required to be provided to the DAA to support development of an ATO for the Contractor's IT systems. The extent of the request of documents from the Contractor will rest on Risk Determination and other factors. At such time as the risk determination has been completed a list of required deliverables will be developed.

Data calls: As an integral part of compliance with DOE Order 205.1B, EM periodically issues data calls requesting specific information about the Contractor's system. Responding to these data calls in a timely manner is within the scope of this contract.

H.42 LABOR RELATIONS

(a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

(b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

H.43 DEPARTMENT OF LABOR WAGE DETERMINATIONS

When the Service Contract Act is applicable to the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number 2005-2511 Rev. 13, dated 6/21/10. Copies of the wage determinations and the existing Collective Bargaining Agreement (CBA) are attached to this contract (Section J, U.S. Department of Labor Wage Determination and Collective Bargaining Agreement). Revised wage determinations from the Department of Labor shall be incorporated into this contract. The Contractor and/or subcontractor shall comply with the revised wage determination for Service Contract Act covered employees.

H.44 RECORDS MANAGEMENT

The Contractor shall conduct records management in accordance with Title 44 USC, Chapters 21, 29, 31, 33, and 35; 36 CFR, Chapter 12, Subchapter B (Records Management); ASME NQA-1-1989 edition, ASME NQA-2a-1990 addenda, part 2.7, to ASME NQA-2-1989 edition, and ASME NQA-3-1989 edition (excluding Section 2.1 (b) and (c); DOE O 243.1 (Records Management Program) and DOE O 243.2 (Vital Records), and any other DOE requirements as directed by the CO. These functions include, but are not limited to: tasks associated with creation/receipt, maintenance, storage/preservation, protecting, scheduling, indexing and dispositioning active and inactive records; retrieving records from on- and off-site storage facilities, and supporting ongoing Freedom of Information Act (FOIA), Privacy Act, Energy Employee Occupational Illness Compensation Program (EEOICPA), Former Worker Medical Screening Program (FWP), Chronic

Beryllium Disease Prevention Program (CBDPP), congressional inquiries, and legal discovery requests.

The Contractor shall ensure records classified as Quality Assurance (QA) records under ANSI/ASME NQA-1-1989, ASME NQA-2a-1990, and ASME NQA-3-1983, if applicable, are categorized appropriately and managed in accordance with 36 CFR Chapter 12, Subchapter B and are traceable to the applicable item, activity or facility.

The Contractor shall implement records management controls to ensure that records in electronic information systems can provide adequate and proper documentation for as long as the information is needed. The Contractor must incorporate controls into the electronic information system or integrate them into a recordkeeping system that is external to the information system itself (see 36 CFR 1236 for specific electronic records management requirements).

All records (see 44 USC 3301 for statutory definition of a record) acquired or generated by the Contractor in performance of this contract, except for those defined as Contractor-owned (Section I clause entitled “DEAR 970.5204-3 Access to and Ownership of Records”), and including, but not limited to, records from a predecessor Contractor and records described by the contract as being maintained in Privacy Act systems of records, shall be the property of the Government.

The Contractor shall preserve and disposition records in accordance with NARA-approved records disposition schedules (DOE Record Disposition Schedules), as posted on the DOE Office of the Chief Information Officer (OCIO) Records Management web page. *Note: Records Retention standards are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor (DEAR 970.5204-3).*

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Management Plan consistent with records management regulations, including Section I Clause entitled, “DEAR 970.5204-3, Access to and Ownership of Records, and Privacy Act Systems of Records” and WIPP specific requirements. The Records Management Plan is a high-level program document that shall describe, at a minimum: a clear delineation between Government-owned and Contractor-owned records; how the Contractor will manage all life-cycle phases of Government-owned records, including specialty records like electronic and e-mail, and audiovisual; the Contractor organization in charge of the records management program; provision of records management training to all Contractor personnel; the safeguarding, protection and maintenance of records (including audiovisual, electronic, records containing sensitive information, and/or classified, if applicable); the WIPP Hazardous Waste Facility Permit; the use of DOE Records Disposition Schedules; management of quality assurance records under NQA-1; the Contractor’s procedures for final disposition of records (e.g., via transfer to a Federal Records Center (FRC, destruction, or transfer to another DOE Contractor); creation and maintenance of administrative records; and the Contractor’s procedures for implementation of the records management program as a whole, including relationships with other programs that cannot function properly without sound records search and retrieval capabilities (e.g., processing claims received by the Department of Labor pursuant to the EEOICPA, FOIA, etc.). The Records Management Plan shall be submitted to the CO for review/approval by DOE within 60 days of written notice to proceed.

The Contractor shall prepare and submit for DOE approval, and execute the approved file plan consistent with records management regulations. A file plan is a comprehensive outline that includes the records series title and description, active file locations, file arrangement, file cutoff, retention period, file transfer instructions, disposition instructions, and other specific instructions that provide guidance for effective management of records, including vital records. The file plan shall be

submitted within six months of written notice to proceed, for review/approval by DOE, to ensure records are being managed and scheduled properly; any revisions to the file plan shall be submitted on an annual basis.

The Contractor shall prepare and submit for DOE approval, and execute the approved Records Disposition Plan consistent with records management regulations. The Records Disposition Plan shall document the Contractor's disposition process which shall include processing records to storage (e.g., on-site, commercial and/or the FRC) and the destruction process (e.g., review process, etc.). This plan shall be developed and submitted for DOE approval prior to any records disposition activities or within six months of written notice to proceed (whichever comes first) for review/approval by DOE, to ensure records are being properly dispositioned; any revisions to the disposition plan shall be submitted to DOE prior to implementation.

The Contractor shall ensure records generated in the performance of the contract containing personal information that is routinely retrieved by name or other personal identifier are classified and maintained in Privacy Act systems of records (SOR) in accordance with Federal Acquisition Regulation clause 52.224-2, Privacy Act (APR 1984) and DOE O 206.1 DOE Privacy Program.

The Contractor shall create and maintain a NEPA Administrative Record for any NEPA documents it may generate. A NEPA Administrative Record is a compilation of all documents which are considered or relied on in the decision making process. Materials that are typically part of the Project record which have been identified for inclusion in the AR shall be duplicated in their entirety for both the Project records and the AR. The only exceptions to this would be very large sets of materials (e.g., the complete set of EIS references) which should be placed in the AR with a color page "flag" placed in both the Project record and the AR identifying that the sole hard copy is in the AR.

Upon contract completion or termination, the Contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor Contractor, its designee, or other destinations, as directed by the Contracting Officer.

PRIVACY ACT SYSTEMS OF RECORDS

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

DOE	System No.
DOE-5	Personnel Records of Former Contractor Employees (includes all former workers)
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-33	Personnel Medical Records (present and former DOE employees and Contractor employees)
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-51	Employee and Visitor Access Control Records*
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites*
DOE-88	Epidemiologic and Other Health Studies, Surveys, and Surveillances

*only if Contractor is responsible for Access Control / Security functions

If the Contractor has Security responsibilities where security clearances and/or weapons are required the following shall be maintained on individuals:

DOE-15	Intelligence-Related Access Authorization
DOE-3 1	Firearms Qualifications Records
DOE-43	Personnel Security Clearance Files
DOE-45	Weapons Data Access Control System (WDACS)
DOE-48	Security Education and/or Infraction Reports
DOE-77	Physical Fitness Test Records (armed uniformed guards)
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records

The Contractor shall monitor systems as identified and notify the CO immediately if there is a change to existing systems or if there is a need for a new system. Lack of notification does not exempt the Contractor from complying with the Privacy Act. To ensure systems are monitored consistently, Contractors are required to review and provide a written notification to the CO annually that the list is accurate and up-to-date.

H.45 ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT (EEOICPA)

The Contractor shall provide support of the EEOICPA established under Title XXXVI of the National Defense Authorization Act of 2001 (Public Law 106-398). The Contractor shall provide records in accordance with the Section I Clause entitled, DEAR 970.5204-3, Access to and Ownership of Records, in support of EEOICPA claims and the claim process under the EEOICPA.

The Contractor shall:

(A) Verify employment and provide other records which contain pertinent information for compensation under the EEOICPA. The Contractor shall provide this support for itself and any named subcontractors' employees.

(B) Provide reports as directed by the U.S. Department of Energy (DOE), such as costs associated with EEOICPA.

(C) Provide an EEOICPA point-of-contact; this employee shall attend meetings, as requested by the U.S. Department of Energy Carlsbad Field Office (DOE- CBFO).

(D) Locate, retrieve and provide a minimum of two (2) copies of any personnel and other program records as requested.

(E) Perform records research needed to complete the Department of Labor (DOL) claims or to locate records needed to complete the claims.

(F) Perform/coordinate records declassification activities required for the processing of claims forms.

(G) Keep Federal Compensation Program Act (FCPA) information current on EEOICPA claims activities.

(H) Ensure costs information is input to the FCPA electronic reporting system by the 10th of each month.

(I) Ensure all EEOICPA claims received are completed and returned to DOE within 45 calendar days of the date entered in the FCPA electronic reporting system. (The EEOICPA costs shall not be funded with EM funds, and the Contractor shall separately track EEOICPA costs and provide a monthly claims activity report of funds spent on EEOICPA claims processing).

The FCPA electronic reporting system will be provided to the Contractor.

H.46 SALE OF PERSONAL PROPERTY

If the Contractor acquires property under this contract that is later determined to be excess/surplus property and the Contractor receives approval from the Contracting Officer to sell such property, the proceeds from the sale shall be handled as a credit to the Contractor's contract cost. The Contractor shall issue a credit on its voucher that is submitted to the U.S. Department of Energy for reimbursement of cost documenting the sale of such property.

H.47 CONTRACTOR COMMUNITY COMMITMENT

DOE and the Contractor are charged with carrying out the critical mission of the National Transuranic Waste Program (NTP) and the Waste Isolation Pilot Plant (WIPP). The WIPP has benefited from its location in southeastern New Mexico and from the workforce and other resources provided by the region. In recognition of these benefits, the Contractor shall take meaningful actions to implement its community commitment as described in DEAR 970.5226-3 which is included in Section I of the contract.

DOE will not prescribe which community commitment activities the Contractor may engage in but identifies the activities listed in (A), (B), and (C) below as worthwhile endeavors for its consideration. The list is not intended to preclude other constructive community activities.

The Contractor shall submit to DOE its Contractor Community Commitment Plan within 30 days of written notice to proceed, after award of the contract. The Contractor shall submit to DOE an annual Community Commitment Plan and report on program success semi-annually. The Contractor is encouraged to identify and pursue community commitment activities in the Community Commitment Plan.

(A) Regional Educational Outreach Programs

The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of WIPP employees to schools, colleges, and universities. The Regional Educational Outreach Programs may involve providing Contractor employees an opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for nonexecutive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.

(B) Regional Purchasing Programs

The Contractor may conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for WIPP subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the WIPP and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy WIPP's needs.

The Contractor may coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities.

DOE encourages the use of regional vendors in fulfilling WIPP requirements.

The Contractor should encourage its subcontractors, at all tiers, to participate in these activities.

(C) Community Support

The Contractor may directly sponsor specific local community activities or sponsor individual employees available to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its Carlsbad, New Mexico based organization. The Contractor may support other community involvement activities as it deems appropriate.

The Contractor may use earned fee for any community commitment activities as it deems appropriate. All costs incurred by the Contractor for community commitment activities, as described above, are unallowable and non-reimbursable under the contract, unless otherwise allowable pursuant to the FAR and DEAR.

This clause, H.47, does not make costs unallowable that are otherwise allowable and incurred pursuant to other provisions or requirements as set forth in this contract, including DEAR 970.5232-2 Payments and Advances (DEC 2000).

The Contractor may make individual employees available to participate in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, site tours, etc.), as defined by FAR 31.205-1(e)(3) and (4). The salaries, wages and fringe benefits of employees while engaged in such approved activities, under FAR 31.205-1(e)(3) and (4), may be allowable costs. Any commitment of labor will have the prior approval of the Contractor's Project Manager. If the Contractor authorizes its employees to participate in community service activities that are allowable in accordance with other provisions of this Contract and FAR 31.205-1(e)(3) or (4), the Contractor shall obtain prior approval of the Contracting Officer of any activity that involves more than 40 hours for company employees in a fiscal year. Failure to obtain prior Contracting Officer approval may result in the costs being determined unallowable in accordance with Section H.21. FAR 31.205-8 makes unallowable any contributions or donations, including cash, property, and services.

H.48 COMPLIANCE WITH INTERNET PROTOCOL, VERSION 6 (IPv6), IN ACQUIRING INFORMATION TECHNOLOGY (IT) (M004)

(a) This contract may involve the acquisition of IT that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that use IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 **on their Web, e-mail, ISP, and DNS servers and services by the end of calendar year 2012, and their internal client applications by fiscal year 2014,** and (3) have IPv6 technical support for development and implementation and fielded product management available.

(b) Should the Contractor find that any future statements of work or specifications provided to the Contractor do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.

(c) The Contractor shall identify an employee to act as a liaison with the DOE HQ Chief Information Officer where needed. The Contractor shall provide a request for waiver to the CO at least 45 days prior to the required date of waiver execution to allow sufficient time for DOE review and approval.

H.49 TRANSITION TO FOLLOW-ON CONTRACT

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor Contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits. After selection by the Government of any successor Contractor, the Contractor and such successor Contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor Contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor Contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor Contractor. Execution of the proposed plan or

any part thereof shall be accomplished in accordance with the CO's direction and approval. This clause shall apply to subcontracts as approved by the CO. The Contractor shall be reimbursed for all reasonable phase-in and phase-out costs, i.e., costs incurred within the agreed period after contract expiration that result from phase-in and phase-out operations.

H.50 PARTNERING

In order to most effectively accomplish this contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect of each other's expectations and values. The process creates a teambuilding environment which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Any cost associated with effectuating this partnership will be agreed to by both parties and will be included in the contract price. The U.S. Army Corps of Engineers has championed partnering and their guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.

H.51 INSURANCE – WORK ON A GOVERNMENT INSTALLATION

The following kinds and minimum amounts of insurance are required during the performance of this contract:

(a) Worker's Compensation and Employer's Liability Insurance:

(1) The amount required by the State of New Mexico under applicable Worker's Compensation and occupational disease statutes

(2) Employer's liability insurance in the amount of $500,000.

(b) General Liability Insurance. Bodily liability coverage written on the comprehensive form of policy of at least $1,000,000 per occurrence.

(c) Automobile Liability Insurance. Coverage shall be listed on the comprehensive form of the policy. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $500,000 per person and $1,000,000 per occurrence for bodily injury and $100,000 per occurrence for property damage.

(d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

H.52 DOE-H-1005 WORKER'S COMPENSATION INSURANCE

(a) The Contractor shall maintain workers' compensation insurance coverage pursuant to the requirements of FAR 28.307-2, FAR 28.308 and DEAR 970.2803-1. The insurance program must be approved by the CO and cover all eligible employees of the Contractor and comply with applicable Federal and State workers' compensation and occupational disease statutes.

(b) The Contractor shall obtain a service-type insurance policy that endorses the Department of Energy Incurred Loss Retrospective Rating Insurance Plan unless a different arrangement is approved by the CO.

(c) The Contractor shall submit to the CO an annual evaluation and analysis of workers' compensation cost as a percent of payroll in comparison with the percentage of payroll cost reported by a nationally recognized Cost of Risk Survey that has been pre-approved by the CO. The Contractor's self evaluation shall discuss:

(1) Periodic audits of claims servicing units; and,
(2) The reasonableness of self-insurance reserves and methods and assumptions used to closeout claims or losses to present value.

(d) The Contractor, if it is a state institution covered under a corporate workers' compensation arrangement, shall provide the CO with a copy of the account statements including deposits, earnings, payments, losses, and administrative fees by the Contractor's financial institution on no less than an annual basis.

(e) The Contractor shall obtain approval from the CO before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the CO.

H.53 NNSA/EM STRATEGIC SOURCING PARTNERSHIP (M004)

The contractor shall participate in the National Nuclear Security Administration (NNSA)/Environmental Management (EM) Strategic Sourcing Partnership. Under this partnership, EM contractors shall work with the NNSA/EM Supply Chain Management Center (SCMC) to yield an enterprise-wide, synergistic strategic sourcing solution that leverages NNSA and EM purchasing power to gain pricing, processing, and reporting efficiencies to reduce costs overall for the Government.

H.54 REPORT AND APPROVAL REQUIREMENT FOR CONFERENCE RELATED ACTIVITIES (M014)

The contractor is required to report and obtain approval from the contracting officer before incurring any costs associated with conference related activities. Conference expenses are defined as follows:

Conference expenses are defined as all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to contractors,

travelers or others associated with the conference, but do not include funds paid under Federal grants to grantees. Conference expenses include any associated authorized travel and per diem expenses, rental of rooms for official business, audiovisual use, light refreshments, registration fees, ground transportation, and other expenses as defined by the Federal Travel Regulations (FTR). All outlays for conference preparation and planning should be included, but employee time for conference preparation should not be included. The FTR provides some examples of direct and indirect conference costs included within conference expenses. See 41 CFR 301-74.2. Conference expenses should be net of any fees or revenue received by the agency or contractor through the conference.

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

PART II – CONTRACT CLAUSES

Section I

TABLE OF CONTENTS

I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) 1
I.2 FAR 52.202-1 DEFINITIONS (JUL 2004) 1
I.3 FAR 52.203-3 GRATUITIES (APR 1984) 1
I.4 FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) 2
I.5 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006) 2
I.6 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 2010) 2
I.7 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) 2
I.8 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) 2
I.9 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) 2
I.10 FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) 2
I.11 FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) 5
I.12 FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989) 6
I.13 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) 6
I.14 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008) 6
I.15 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) 6
I.16 FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2010) 6
I.17 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002) 8
I.18 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006) 8
I.19 FAR 52.209- 8 UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (DEVIATION) (OCT 2010) 9
I.20 FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) 9
I.21 FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (OCT 2010) 9
I.22 FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) 9
I.23 FAR 52.215-10 -- PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (OCT 2010) 9
I.24 FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010) 9

I.25 FAR 52.215.13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 2010) 9
I.26 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) 9
I.27 FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) 10
I.28 FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) 10
I.29 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) 10
I.30 FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009) 10
I.31 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999) 11
I.32 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000) 12
I.33 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011) 12
I.34 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) 12
I.35 FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999) 12
I.36 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (DEC 2010) 13
I.37 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) 13
I.38 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990) 13
I.39 FAR 52.222-3 CONVICT LABOR (JUN 2003) 13
I.40 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005) 13
I.41 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) 14
I.42 FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007) 14
I.43 FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUN 2003) 14
I.44 FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEPT 2010) 14
I.45 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010) 14
I.46 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010) 14
I.47 FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) 14
I.48 RESERVED 14
I.49 FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) 15
I.50 FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) 15
I.51 FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007) (MOD 14) 15
I.52 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) 15
I.53 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003) 16
I.54 FAR 52.223-6 DRUG FREE WORKPLACE (MAY 2001) 16
I.55 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) 16
I.56 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000) 17
I.57 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) 17
I.58 FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995) 17
I.59 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) 18
I.60 FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (MOD 14) 18

I.61 FAR 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS, ALTERNATE I (DEC 2007) (MOD 14) 18
I.62 FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008) 18
I.63 FAR 52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010) 18
I.64 FAR 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) (MOD 14) 18
I.65 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) 18
I.66 FAR 52.224-2 PRIVACY ACT (APR 1984) 18
I.67 FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (FEB 2009) 18
I.68 FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010) 18
I.69 FAR 52.225-11 BUY AMERICAN ACT - CONSTRUCTION MATERIALS WITH TRADE AGREEMENT (SEPT 2010) 18
I.70 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008) 18
I.71 FAR 52.227-3 PATENT INDEMNITY (APR 1984) 18
I.72 FAR 52.228-7 INSURANCE -- LIABILITY TO THIRD PERSONS (MAR 1996) 19
I.73 FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003) 19
I.74 FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2010) 20
I.75 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) 21
I.76 FAR 52.232-17 INTEREST (OCT 2010) 21
I.77 FAR 52.232-18 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984) 22
I.78 FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986) 22
I.79 FAR 52.232-25 PROMPT PAYMENT (OCT 2008) 23
I.80 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (OCT. 2003) 23
I.81 FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991) 24
I.82 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE 1) (JUN 1985) 25
I.83 FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) 26
I.84 RESERVED (FAR 52.234-4 REMOVED IN M004) 26
I.85 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) 26
I.86 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991) 26
I.87 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996) 27
I.88 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) 27
I.89 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001) 27
I.90 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997) 28
I.91 FAR 52.242-13 BANKRUPTCY (JUL 1995) 28
I.92 FAR 52.243-2 CHANGES -- COST-REIMBURSEMENT (AUG 1987) ALT II (APR 1984) 28
I.93 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) 29
I.94 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010) 29
I.95 FAR 52-245-1 GOVERNMENT PROPERTY (AUG 2010) 29
I.96 FAR 52.245-9 USE AND CHARGES (AUG 2010) 39
I.97 FAR 52.246-25 LIMITATION OF LIABILITY -- SERVICES (FEB 1997) 39
I.98 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) 39
I.99 FAR 52.247-63 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JUN 2003) 39

I.100 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) ... 39
I.101 FAR 52.248-1 VALUE ENGINEERING (OCT 2010) ... 40
I.102 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) ... 40
I.103 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984) ... 40
I.104 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (AUG 2010) ... 40
I.105 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) ... 40
I.106 FAR 52.252-4ALTERATIONS IN CONTRACT (APR 1984) ... 40
I.107 FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991) ... 40
I.108 DEAR 952.202-1 DEFINITIONS ... 40
I.109 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) ... 40
I.110 DEAR 952.204-2 SECURITY (AUG 2009) ... 40
I.111 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997) ... 42
I.112 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994) ... 43
I.113 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002) ... 43
I.114 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000) ... 46
I.115 DEAR 952.204-77 COMPUTER SECURITY (AUG 2006) ... 47
I.116 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)COMPUTER SECURITY (AUG 2006) ... 47
I.117 RESERVED ... 47
I.118 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST ALTERNATE I (AUG 2009) ... 47
I.119 DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008)) ... 50
I.120 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984) ... 50
I.121 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM (MAY 2000) ... 50
I.122 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984) ... 51
I.123 DEAR 952.226.72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996) ... 51
I.124 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (A000) ... 51
I.125 DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994) ... 52
I.126 DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010) ... 52
I.127 NUCLEAR HAZARDS INDEMNITY AGREEMENT (M004) ... 52
I.128 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009) ... 55
I.129 DEAR 970.5203-1 MANAGEMENT CONTROLS (JUN 2007) ... 56
I.130 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006) ... 57
I.131 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) ... 58
I.132 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000) ... 58
I.133 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000) ... 58
I.134 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005) ... 59
I.135 DEAR 970.5208-1 PRINTING (DEC 2000) ... 61
I.136 DEAR 970.5211-1 WORK AUTHORIZATION (MAY 2007) ... 61

I.137 DEAR 970-5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) ALTERNATE II (DEC 2000) (MODIFIED) ALTERNATE III (DEC 2000) 62
I.138 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALT II (M004) 65
I.139 DEAR 970.5215-4 COST REDUCTION (DEC 2000) 70
I.140 DEAR 970.5215-5 LIMITATION ON FEE (DEC 2000) 73
I.141 DEAR 970.5217-1 WORK FOR OTHERS PROGRAM (JAN 2005) 73
I.142 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS MANAGEMENT AND OPERATING CONTRACTS (DEC 2000) 75
I.143 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000) 75
I.144 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) 76
I.145 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000) 78
I.146 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000) 78
I.147 DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (MOD 14) 78
I.148 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000) 80
I.149 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000) 80
I.150 DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000) 81
I.151 DEAR 970.5227-1 RIGHTS IN DATA FACILITIES (DEC 2000) 81
I.152 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) 85
I.153 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002) 86
I.154 DEAR 970.5227-6 PATENT INDEMNITY—SUBCONTRACTS (DEC 2000) 86
I.155 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002) 86
I.156 DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000) 87
I.157 DEAR 970.5228-1 INSURANCE–LITIGATION AND CLAIMS (AUG 2009) 93
I.158 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000) 95
I.159 DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000) 96
I.160 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000) 96
I.161 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000) 97
I.162 DEAR 970-5232-3 ACCOUNTS, RECORDS, AND INSPECTION (AUG 2009) ALTERNATE I 99
I.163 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000) 101
I.164 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000) 103
I.165 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000) 103
I.166 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000) 103
I.167 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000) 103
I.168 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000) 104
I.169 DEAR 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (AUG 2009) 104
I.170 DEAR 970.5243-1 CHANGES (DEC 2000) 105
I.171 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2009) 105

I.172 DEAR 970.5245-1 PROPERTY (DEC 2000)..... 109

Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: Consistent with DEAR 970.5202, DEAR clauses indicated as “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

Part II

Section I

CONTRACT CLAUSES

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

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

http://farsite.hill.af.mil
https://www.acquisition.gov/far

I.2 FAR 52.202-1 DEFINITIONS (JUL 2004)

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

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

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

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

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

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

Head of Agency means: (*i)* The Secretary; (*ii)* Deputy Secretary; (*iii)* Under Secretaries of the Department of Energy and (*iv*) the Chairman, Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

I.4 FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

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

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

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

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

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

I.5 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)

I.6 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 2010)

I.7 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

I.8 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

I.9 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

I.10 FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)

(a) Definitions. As used in this clause—

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

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

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to

a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

I.11 FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	Obtain from
DHS Fraud Hotline	DHSOIGHOTLINE@dhs.gov and http://www.dhs.gov/xoig/about/gc_1163703329805.shtm

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

I.12 FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

I.13 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

I.14 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)

I.15 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

I.16 FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2010)

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

"Executive" means officers, managing partners, or any other employees in management positions.

"First-tier subcontract" means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor's general and administrative expenses or indirect cost.

"Total compensation" means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.
(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
(5) Above-market earnings on deferred compensation which is not tax-qualified.
(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Contractor shall report the following information at http://www.fsrs.gov for each first-tier subcontract. (The Contractor shall follow the instruction s at http://www.fsrs.gov to report the data.)
(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
(ii) Name of the subcontractor.
(iii) Amount of the subcontract award.
(iv) Date of the subcontract award.
(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
(vi) Subcontract number (the subcontract number assigned by the Contractor).
(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
(ix) The prime contract number, and order number if applicable.
(x) Awarding agency name and code.
(xi) Funding agency name and code.
(xii) Government contracting office code.
(xiii) Treasury account symbol (TAS) as reported in FPDS.
(xiv) The applicable North American Industry Classification System code (NAICS).
(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year at http://www.ccr.gov , if—
(i) In the Contractor's preceding fiscal year, the Contractor received—
(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm .)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of $25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at http://www.fsrs.gov , if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under $300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of $25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.

I.17 FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002)

I.18 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of $30,000 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 $30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

(1) The name of the subcontractor.

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

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

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

I.19 FAR 52.209- 8 UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (DEVIATION) (OCT 2010)

(a) (1) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at *http://www.ccr.gov* (see 52.204-7).

(2) At the first semi-annual update on or after April 15, 2011, the Contractor shall post again any required information that the Contractor posted prior to April 15, 2011.

(b) (1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.,* for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) *Public access* to *information in FAPIIS.*

(i) Public requests for system information that was posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(ii) As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

I.20 FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)

I.21 FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (OCT 2010)

I.22 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; and (e) the specifications.

I.23 FAR 52.215-10 -- PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (OCT 2010)

I.24 FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)

I.25 FAR 52.215.13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 2010)

I.26 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)

I.27 FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

I.28 FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

I.29 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

I.30 FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

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

"Added value" means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).
"Excessive pass-through charge," with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).
"No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).
"Subcontract" means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
"Subcontractor," as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting*. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges*. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and
(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records*.

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.
(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

I.31 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days of the end of the contract period.

I.32 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 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 clause.
(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

I.33 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

I.34 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011)

I.35 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 dollar amount 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 the commercial plan.

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

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

I.36 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (DEC 2010)

(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, teaming arrangement members, and subcontractors (see exception in paragraph (b) of this section) 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 a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) For subcontractors that are not certified as a small disadvantaged business by the Small Business Administration, the Contractor shall accept the subcontractor's written self-representation as a small disadvantaged business, unless the Contractor has reason to question the self-representation.

(c) 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, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

I.37 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.38 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

I.39 FAR 52.222-3 CONVICT LABOR (JUN 2003)

I.40 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005)

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

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the

employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

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

(d) Payrolls and basic records.

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

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

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

I.41 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

I.42 FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

I.43 FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUN 2003)

I.44 FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEPT 2010)

I.45 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)

I.46 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010)

I.47 FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

I.48 RESERVED

I.49 FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)

I.50 FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

I.51 FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007) (MOD 14)

I.52 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(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 *(If none, insert "None"*)	Identification No.
_____	_____
_____	_____
_____	_____

(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 non-responsible 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) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

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

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

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

I.53 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

I.54 FAR 52.223-6 DRUG FREE WORKPLACE (MAY 2001)

I.55 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

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

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

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

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

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

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

(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

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

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

I.56 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

I.57 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

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

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

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

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

Warning

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

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

I.58 FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

I.59 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

I.60 FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (MOD 14)

I.61 FAR 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS, ALTERNATE I (DEC 2007) (MOD 14)

I.62 FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)

I.63 FAR 52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

I.64 FAR 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) (MOD 14)

I.65 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

I.66 FAR 52.224-2 PRIVACY ACT (APR 1984)

I.67 FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (FEB 2009)

I.68 FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010)

I.69 FAR 52.225-11 BUY AMERICAN ACT - CONSTRUCTION MATERIALS WITH TRADE AGREEMENT (SEPT 2010)

I.70 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

I.71 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.

I.72 FAR 52.228-7 INSURANCE -- LIABILITY TO THIRD PERSONS (MAR 1996)

I.73 FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the U.S. Department of Energy and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The U.S. Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the U.S. Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the U.S. Department of Energy to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

I.74 FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2010)

(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 paragraph (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 paragraph (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 paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

I.75 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

I.76 FAR 52.232-17 INTEREST (OCT 2010)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified 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 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 611 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 (e) 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) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) 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, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;
(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.77 FAR 52.232-18 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

I.78 FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

I.79 FAR 52.232-25 PROMPT PAYMENT (OCT 2008)

I.80 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (OCT. 2003)

(a) *Method of payment.*

(1) All payments by the Government under this contract, shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or
(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment*. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment*. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers*.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;
(ii) Paying any prompt payment penalty due; and
(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment*. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims*. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent*. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information*. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I.81 FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.82 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE 1) (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 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. 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 asserts its right to 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 a proposal 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 miscertifications, a protest related to this Contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.83 FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

I.84 RESERVED (FAR 52.234-4 REMOVED IN M004)

I.85 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

I.86 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 or termination, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.87 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

I.88 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract--

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I.89 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

I.90 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: **Nuclear Waste Management Partnership LLC**

Signature: Exemption 6

Name of Certifying Official: **Farok Sharif**

Title: **Project Manager**

Date of Execution: **August 17, 2011**

I.91 FAR 52.242-13 BANKRUPTCY (JUL 1995)

I.92 FAR 52.243-2 CHANGES -- COST-REIMBURSEMENT (AUG 1987) ALT II (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.
(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
(5) Method of shipment or packing of supplies.
(6) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the –

(1) Estimated cost, delivery or completion schedule, or both;
(2) Amount of any fixed fee; and
(3) Other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

I.93 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-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this Contract on a noncompetitive basis to its protégés.

I.94 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

I.95 FAR 52-245-1 GOVERNMENT PROPERTY (AUG 2010)

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

“Acquisition cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Cannibalize” means to remove parts from Government property for use or for installation on other Government property.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

“Contractor inventory” means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;
(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and
(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

“Contractor's managerial personnel” means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;
(2) All or substantially all of the Contractor's operation at any one plant or separate location; or
(3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (*e.g.*, count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Property records” means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property.” See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

"Sensitive property" means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

"Surplus property" means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) *Property management*.

(1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) *Use of Government property*.

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) *Government-furnished property*.

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an “as-is” condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property*.

(1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) *Fixed-price contracts.*

(i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause.

(ii) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(iii) If this contract contains a provision directing the Contractor to purchase property for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(A) Title to property purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such property; and

(B) Title to all other property shall pass to and vest in the Government upon—

(*1*) Issuance of the property for use in contract performance;

(*2*) Commencement of processing of the property or its use in contract performance; or

(*3*) Reimbursement of the cost of the property by the Government, whichever occurs first.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts*.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;
(B) Commencement of processing of the property for use in contract performance; or
(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as "Government property)", are subject to the provisions of this clause.

(f) *Contractor plans and systems*.

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property*. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property*. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (*e.g.*, stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property*. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property*. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property*. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(*1*) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
(*2*) Quantity received (or fabricated), issued, and balance-on-hand.
(*3*) Unit acquisition cost.
(*4*) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
(*5*) Unit of measure.
(*6*) Accountable contract number or equivalent code designation.
(*7*) Location.
(*8*) Disposition.
(*9*) Posting reference and date of transaction.
(*10*) Date placed in service.

(B) *Use of a Receipt and Issue System for Government Material*. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory*. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (*e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control*.

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (*e.g.*, extent of liability for loss, theft, damage or destruction of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports*. The Contractor shall have a process to create and provide reports of discrepancies; loss, theft, damage or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, theft, damage or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage or destruction to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

(*1*) Date of incident (if known).

(*2*) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(*3*) Quantity.

(*4*) Unique-item Identifier (if available).

(*5*) Accountable Contract number.

(*6*) A statement indicating current or future need.

(*7*) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(*8*) All known interests in commingled property of which the Government property is a part.

(*9*) Cause and corrective action taken or to be taken to prevent recurrence.

(*10*) A statement that the Government will receive any reimbursement covering the loss, theft, damage or destruction in the event the Contractor was or will be reimbursed or compensated.

(*11*) Copies of all supporting documentation.

(*12*) Last known location.

(*13*) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) *Relief of stewardship responsibility*. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property*.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) *Maintenance*. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout*. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, theft, damage or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) *Systems analysis*.

(1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor’s consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor’s) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) *Contractor Liability for Government Property*.

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage or destruction. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage or destruction of Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment*. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.
(2) Delivery of Government-furnished property in a condition not suitable for its intended use.
(3) An increase, decrease, or substitution of Government-furnished property.
(4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal*. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) *Scrap to which the Government has obtained title under paragraph (e) of this clause*.

(i) *Contractor with an approved scrap procedure*.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.
(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).
(C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—
(*1*) Requires demilitarization;
(*2*) Is a classified item;
(*3*) Is generated from classified items;
(*4*) Contains hazardous materials or hazardous wastes;
(*5*) Contains precious metals that are economically beneficial to recover; or
(*6*) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure*. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) *Predisposal requirements*.

(i)Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority—
(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;
(B) May purchase the property at the acquisition cost; or
(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) *Inventory disposal schedules*.

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (*e.g.*, computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals in raw or bulk form;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional; information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(4) *Submission requirements*. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) *Corrections*. The Plant Clearance Officer may—

(i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) *Postsubmission adjustments*. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) *Storage*.

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) *Disposition instructions.*

(i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) *Disposal proceeds*. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) *Subcontractor inventory disposal schedules*. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment of Government property*.

(1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication*. All communications under this clause shall be in writing.

(m) *Contracts outside the United States*. If this contract is to be performed outside of the United States and its outlying areas, the words “Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

I.96 FAR 52.245-9 USE AND CHARGES (AUG 2010)

I.97 FAR 52.246-25 LIMITATION OF LIABILITY -- SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that –

(1) Occurs after Government acceptance of services performed under this contract; and
(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of –

(1) All or substantially all of the Contractor's business;
(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

I.98 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When 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 U.S. 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 U.S. 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-TBD. This may be confirmed by contacting Contracting Officer, Carlsbad Field Office, P.O. Box 2502 Carlsbad, NM 88221.

I.99 FAR 52.247-63 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JUN 2003)

I.100 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

I.101 FAR 52.248-1 VALUE ENGINEERING (OCT 2010)

I.102 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004)

I.103 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

I.104 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (AUG 2010)

I.105 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

I.106 FAR 52.252-4ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:
__None__

I.107 FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991)

I.108 DEAR 952.202-1 DEFINITIONS

I.109 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.110 DEAR 952.204-2 SECURITY (AUG 2009)

(a) *Responsibility*. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations*. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) *Definition of classified information*. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data*. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data*. The term *"Formerly Restricted Data"* means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information*. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM)*. *SNM* means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel*. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability*. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownersip, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply

with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.111 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 Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, “information” means facts, data, or knowledge itself; “document” means the physical medium on or in which information is recorded; and “material” means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is “Restricted Data” and “Formerly Restricted Data” (classified under the Atomic Energy Act of 1954, as amended) and “National Security Information” (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy 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 Department of Energy to

determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.112 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 polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

I.113 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be

treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. 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 must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign Interest means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

NOTICE TO OFFERORS - CONTENTS REVIEW
(PLEASE REVIEW BEFORE SUBMITTING)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e., ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

I.114 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

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

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

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

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

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

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

(g) In 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.

I.115 DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)

(a) Definitions.

(1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) Individual means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and
(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

I.116 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)COMPUTER SECURITY (AUG 2006)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.117 RESERVED

I.118 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST ALTERNATE I (AUG 2009)

(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 therefore (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of (Contracting Officer see DEAR 9.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure after award*.

(1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) *Remedies*. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) *Waiver*. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(f) *Subcontracts*.

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

I.119 DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008))

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

I.120 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

(a) Notwithstanding any other provisions 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 acquired.

I.121 DEAR 952.219-70 DOE Mentor-Protégé program (May 2000)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit ``lessons learned'' evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

I.122 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this Contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.123 DEAR 952.226.72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996)

(a) Definition. Energy Policy Act target groups, as used in this provision means—
(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—
(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or
(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;
(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of education pursuant to 34 CFR 608.2; and
(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Goals. The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities—
(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: * * * percent;
(2) Historically Black colleges and universities: * * * percent; and
(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent. [* * * These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) Reporting requirements.
(1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.
(2) If the contract includes reporting requirements under FAR 52.219-9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

I.124 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (A000)

(a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its Contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(a) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.125 DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)

Except for technical data contained on pages none of the contractor's proposal dated August 17, 2011 which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

I.126 DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

I.127 NUCLEAR HAZARDS INDEMNITY AGREEMENT (M004)

Effective Date. This contract was awarded on or after August 8, 2005 and at contract award contained the clause at DEAR 952.250-70 (JUN 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, control the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

(a) *Authority*. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions*. The definitions set out in the Act shall apply to this clause.

(c) *Financial Protection*. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) *Indemnification*.

(1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) Waiver of Defenses.

(1) 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 or persons indemnified, including, but not limited to:

1 Negligence;

2 Contributory negligence;

3 Assumption of risk; or

4 Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply 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 of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations*. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses*. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties*. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties*. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts*. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

I.128 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

(a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available.

Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor
SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR
(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer.

I.129 DEAR 970.5203-1 MANAGEMENT CONTROLS (JUN 2007)

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

[71 FR 16241, Mar. 31, 2006]

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

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

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

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

I.130 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)

(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, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

[71 FR 16241, Mar. 31, 2006]

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

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

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

I.131 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)

(a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Secretary of Energy, the Contractor to remove the employee from work under the Contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

(b) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.

I.132 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.133 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

(Administrative Note**:** See Attachment H for Listing of Applicable Directives)

(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 (d) of this clause, the Contracting Officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the Contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the I clause of this Contract entitled "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor’s compliance with the requirements.

I.134 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and

are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

[70 FR 37010 Jun. 28, 2005]

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance

with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the contracting officer);

(2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.135 DEAR 970.5208-1 PRINTING (DEC 2000)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.136 DEAR 970.5211-1 WORK AUTHORIZATION (MAY 2007)

(a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the Contractor with program execution guidance in sufficient detail to enable the Contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The Contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs,

and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost estimates. The Contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The Contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the Contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in estimated cost. The Contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The Contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of funds and incurrence of costs. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the ``Obligation of Funds'' or equivalent clause of the contract.

(g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the Contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the Contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

I.137 DEAR 970-5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) ALTERNATE II (DEC 2000) (MODIFIED) ALTERNATE III (DEC 2000)

Paragraph (c) (2) is hereby modified to replace “DOE Operations/Field Manager, or designee” with “Chief Operating Officer, Office of Environment Management” as the designated Fee Determination Official.

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into

negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be the Fee Determination Official. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

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

(f) Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management

during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I.138 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALT II (M004)

(a) General.

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

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

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

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

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

(b) Reduction Amount.

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

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

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a

reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

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

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

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

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas;
or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)

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

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

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

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

(v) At the end of the contract:

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

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

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

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

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

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

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

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

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

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

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

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.

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

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

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

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

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

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

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

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

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

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following—

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

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

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

(f) Minimum requirements for cost performance.

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

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

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

I.139 DEAR 970.5215-4 COST REDUCTION (DEC 2000)

(a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) Definitions.

Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.
DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or

(2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) Procedure for submission of CRPs.

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

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

(ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

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

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

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

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

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

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

(e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

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

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

(3) Not result in any impairment of essential functions.

(f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.

(j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

I.140 DEAR 970.5215-5 LIMITATION ON FEE (DEC 2000)

(a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504-1-1, or as specifically stated elsewhere in the solicitation.

(b) The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-5; and total available fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-9; or fixed fee or total available fee to an amount as specifically stated elsewhere in the solicitation.

I.141 DEAR 970.5217-1 WORK FOR OTHERS PROGRAM (JAN 2005)

(a) Authority to Perform Work for Others. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor’s Implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of Participation in Work for Others Program. The Contractor:

(1) Must not perform Work for Others activities that would place it in direct competition with the domestic private sector;

(2) Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial

Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

(3) Must not commence work on any Work for Others activity until a Work for Others proposal package has been approved by the DOE Contracting Officer or designated representative;

(4) Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

(5) Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Work for Others proposal;

(6) Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Work for Others activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;

(7) Must perform all Work for Others projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE contractor's performance as defined in the DOE approved work for others proposal package; and,

(9) Must maintain a summary listing of project information for each active Work for Others project, consisting of:

(i) Sponsoring agency;
(ii) Total estimated costs;
(iii) Project title and description;
(iv) Project point of contact; and,
(v) Estimated start and completion dates.

(d) Negotiation and Execution of Work for Others Agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Work for Others project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Work for Others agreement.

(2) The Contractor must submit all Work for Others agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of Project Proposals. When the Contractor proposes to perform Work for Others activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) Work for Others Appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Work for Others Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Work for Others Report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Work for Others Activities under the contract.
69 FR 75001, December 15, 2004

I.142 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.143 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

(a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this Contract.

(b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

I.144 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

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

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed- upon by DOE and the contractor. These

agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this Contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.145 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)

(a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.146 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)
Since this contract involves Contractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at
http://www.archives.gov/federal-register/executive-orders/

I.147 DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (MOD 14)

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental,

Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at http://epa.gov/cpg
(2) Biobased Products are described at http://www.biopreferred.gov/
(3) Energy efficient products are at http://energystar.gov/products for Energy Star products
(4) Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products
(5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at http://www.epeat.net the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
(6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at http://www.archives.gov/federal-register/executive-orders/disposition.html
(7) Non-Ozone Depleting Alternative Products are at http://www.epa.gov/ozone/strathome.html
(8) Water efficient plumbing products are at http://epa.gov/watersense

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;
(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;
(3) Does not meet performance needs; or,
(4) Cannot be delivered in time to meet a critical need.
(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/greeningepa/practices/eo13423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (http://www.archives.gov/federal-register/executive-orders/disposition.html). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance.* This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249-6, Termination (Cost Reimbursement)].

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

I.148 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided as an Attachment in Section J. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.149 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. §7274h, in instances where the 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 subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. §403) expected to exceed $500,000.

I.150 DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000)

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

I.151 DEAR 970.5227-1 RIGHTS IN DATA FACILITIES (DEC 2000)

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Contractor shall have:

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

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

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

(c) Copyrighted Material. (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance

of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

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

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

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

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

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

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

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

Limited Rights Notice

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

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

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

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

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

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

(End of Notice)

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

Restricted Rights Notice-Long Form

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

(b) This computer software may be:

> (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
>
> (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
>
> (3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

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

Restricted Rights Notice-Short Form

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

(End of Notice)

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

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

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

I.152 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

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

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the

contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c) (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

I.153 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

I.154 DEAR 970.5227-6 PATENT INDEMNITY—SUBCONTRACTS (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted, as prescribed in FAR 48 CFR 52.227-3.

I.155 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

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

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

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

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

I.156 DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)

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

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

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

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

(5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.

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

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

(b) Allocation of Principal Rights. (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject Invention Disclosures. (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject

inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

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

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

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

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

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

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

(vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to *35 U.S.C. 202*(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

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

(viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908.*

(3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

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

programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

(6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to *35 U.S.C. 205* and 37 CFR 401.13.

(d) Minimum Rights of the Contractor. (1) Contractor License. (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

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

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

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

(2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the

foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

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

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

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

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

(2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with *35 U.S.C. 202*(a)(ii).

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

(4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

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

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

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

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

(2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(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.

(h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

(i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(j) Reports. (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

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

(k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may

contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

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

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

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

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

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

I.157 DEAR 970.5228-1 INSURANCE–LITIGATION AND CLAIMS (AUG 2009)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer

challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

(k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I.158 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable

item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.159 DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000) ALTERNATE II (DEC 2000)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on (Insert Date Contract Began). To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to (Insert Date Contract Began), the contractor shall be responsible in accordance with the terms and conditions of this contract.

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

(c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.

I.160 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The Contractor shall be afforded a reasonable opportunity to respond in writing.

I.161 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)

(a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the section H clause entitled "Program Performance Fee." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this Contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account--use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as an Attachment in Section J. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the Contractor with DOE's patent clearance requirements, and

(2) The furnishing by the Contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the contractor’s right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.092, DEAR 970.5228-1, "Insurance--Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted,

(i) any claim which the Government may have against the Contractor in connection with this contract, and

(ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this Contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

(j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the DOE Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(k) 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.

I.162 DEAR 970-5232-3 ACCOUNTS, RECORDS, AND INSPECTION (AUG 2009) ALTERNATE I

(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 or anticipated to be
incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

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

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

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

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

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

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor. The contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at 48 CFR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (h) of this clause, but which contains a "defective cost or pricing data" clause.

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

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

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(i) Internal audit. The contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the contractor must submit to the contracting officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;
(ii) The audit organization's size and the experience and educational standards of its staff;
(iii) The audit organization's relationship to the corporate entities of the contractor;
(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
(vi) The intended use of external audit resources;
(vii) The plan for audit of subcontracts, both pre-award and post-award; and
(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE contracting officer.

(2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the contractor must submit to the contracting officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
(4) The contracting officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242-1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.
(End of Clause)

I.163 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

(a) Obligation of funds. (Modified) The amount presently obligated by the Government with respect to this contract is set forth in Section B-4 of this Contract. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this Contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the Section I clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of

those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices--Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the ninety (90)-day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only ninety (90) days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

I.164 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)

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

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

I.165 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)

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.

I.166 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

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.

I.167 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)

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 Laws, regulations, and DOE directives clause of this Contract.

I.168 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

Upon request of the Contracting Officer and acceptance thereof by the contractor, the Contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Contracting Officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.169 DEAR 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor,

(i) was subject to a Contracting Officer's final decision and not appealed;

(ii) the Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is:

(1) expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when

(1) the Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) the amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) the Contractor demonstrates to the Contracting Officer's satisfaction that:

(i) it has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) the unallowable costs subject to the penalty were inadvertently incorporated into the submission.

I.170 DEAR 970.5243-1 CHANGES (DEC 2000)

(a) Changes and adjustment of fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this Contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Contract.
A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.171 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2009)

(a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

(c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) Audit of Subcontractors. (1) The contractor shall provide for:

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).

(f) Bonds and Insurance. (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of $100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of

nonavailability of individual items to the DOE contracting officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) Construction and Architect-Engineer Subcontracts. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest. (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.

(n) [Removed and Reserved.]

[71 FR 16242, Mar. 31, 2006]

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to

appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:

(1) Motor vehicles-48 CFR 908.7101

(2) Aircraft-48 CFR 908.7102

(3) Security Cabinets-48 CFR 908.7106

(4) Alcohol-48 CFR 908.7107

(5) Helium-48 CFR 908.7108

(6) Fuels and packaged petroleum products-48 CFR 908.7109

(7) Coal-48 CFR 908.7110

(8) Arms and Ammunition-48 CFR 908.7111

(9) Heavy Water-48 CFR 908.7121(a)

(10) Precious Metals-48 CFR 908.7121(b)

(11) Lithium-48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped-41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702

(r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;

(2) when lease renewals are being considered; and

(3) at other times as circumstances warrant.

(s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles

relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(y) Legal Services. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

I.172 DEAR 970.5245-1 PROPERTY (DEC 2000)

(a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) Title to property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as 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 all cost reimbursable subcontracts.