GENERAL PROVISIONS
FOR
COST REIMBURSEMENT CONTRACTS

This set of General Provisions consists of Sections A through C.
Section C clauses **apply only if specifically stated** in the Subcontract.

(GP/CR 2/18, Rev. 3)

Waste Isolation Pilot Plant
Carlsbad, New Mexico

TABLE OF CONTENTS

GENERAL PROVISIONS FOR COST REIMBURSEMENT SUBCONTRACTS

ARTICLE ..... PAGE

DEFINITIONS 3
GENERAL 4
SUBCONTRACTING 4

SECTION A ARTICLES APPLY REGARDLESS OF ORDER PRICE

A.1 ACCOUNTS, RECORDS, AND INSPECTION 7
A.2 ALLOWABLE COSTS, AND PAYMENT 8
A.3 APPROVALS 11
A.4 ASSIGNMENT 11
A.5 CLASSIFIED INVENTIONS 12
A.6 COMPLIANCE 12
A.7 COMPLIANCE WITH EMPLOYEE CONCERNS 12
A.8 CONFIDENTIALITY OF INFORMATION 12
A.9 DISPUTES, ARBITRATION, AND GOVERNING LAW 13
A.10 FIXED FEE 13
A.11 GRATUITIES 13
A.12 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL - SAFETY DATA 14
A.13 INSPECTION OF SUPPLIES AND SERVICES 15
A.14 INSURANCE-LIABILITY TO THIRD PARTIES 16
A.15 KEY PERSONNEL 18
A.16 LIMITATION OF FUNDS 18
A.17 LAWS, REGULATIONS AND DOE DIRECTIVES 19
A.18 SUSPECT COUNTERFEIT ITEMS 20
A.19 MONTHLY ACCRUAL REPORT 21
A.20 NEW MEXICO GROSS RECEIPTS TAX AND COMPENSATING TAX 21
A.21 OCCUPATIONAL SAFETY AND HEALTH ACT 21
A.22 OZONE DEPLETING SUBSTANCE 21
A.23 PASSAGE OF TITLE AND LIENS 22
A.24 PRICE-ANDERSON AMENDMENTS ACT 22
A.25 PUBLIC RELEASE OF INFORMATION 23
A.26 RIGHTS TO PROPOSAL DATA (TECHNICAL) 23
A.27 REPORTING OF ROYALTIES 23
A.28 SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES 23
A.29 SUBCONTRACT PARTICIPATION BY FOREIGN NATIONALS 23
A.30 TECHNICAL DIRECTION 24
A.31 TOXIC SUBSTANCES CONTROL ACT OF 1976 25
A.32 TRAVEL RESTRICTIONS 25
A.33 NWP POLICY ON OPPORTUNITY 25

APPLICABLE WHEN SELLER'S PERSONNEL WORK ON DOE WIPP SITE COVERED WORKPLACES/ACTIVITIES

A.34 ACCIDENT PREVENTION 25
A.35 ENVIRONMENTAL COMPLIANCE 27
A.36 ENVIRONMENT, SAFETY, AND HEALTH - GOVERNMENT OWNED OR LEASED 29
A.37 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI) 31
A.38 SITE ACCESS AND SECURITY REQUIREMENTS 32
A.39 WORKER SAFETY AND HEALTH PLAN 34

SECTION B, GOVERNMENT FLOWDOWN CLAUSES INCORPORATED BY REFERENCE

SECTION C ARTICLES APPLY ONLY IF SPECIFIED IN THE ORDER, REGARDLES OF ORDER PRICE

C.1 CLASSIFICATION 40
C.2 COLLECTIVE BARGAINING AGREEMENTS 41
C.3 COMMERCIAL BILL OF LADING (FEB 2006) 41
C.4 CONTRACTORS ORGANIZATION 41
C.5 COPYRIGHTS FOR NWP DIRECTED TECHNICAL PERFORMANCE 41
C.6 COST REDUCTION PROPOSALS 41
C.7 FIRST ARTICLE APPROVAL - TESTING 42
C.8 PROTECTION OF GOVERNMENT BUILDINGS 42
C.9 REPORTING REQUIREMENTS 42
C.10 RESPONSE ACTION SUBCONTRACTOR INSURANCE 44
C.11 RIGHT OF FIRST REFUSAL OF EMPLOYMENT 44
C.12 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE II 44
C.13 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE III 44
C.14 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE IV 45
C.15 ADDITIONAL DATA REQUIREMENTS (JUN 1987) 45
C.16 SCIENTIFIC AND TECHNICAL INFORMATION 45
C.17 AFFIRMATIVE PROCUREMENT 45

ATTACHMENT 1 SENSITIVE FOREIGN NATION CONTROLS

GENERAL PROVISIONS FOR COST REIMBURSEMENT SUBCONTRACTS

ARTICLES AND REFERENCE NUMBERS

Note: SUBCONTRACT CLAUSES INCORPORATED BY REFERENCE
This document incorporates one or more clauses by reference, with the same force and effect as if they were printed in full text. The terms “Contracting Officer”, “Contractor”, and “Subcontractor” shall be changed to properly identify the parties. See supplemental definitions under Section B

DEFINITIONS

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

A. “Contracting Officer” shall mean the Government official executing the Prime Contract, No. DE-EM0001971, between Nuclear Waste Partnership LLC (NWP), and DOE and includes any appointed successor or authorized representative thereof.

B. “DOE” shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.

C. “Government” shall mean the United States of America.

D. “Head of the Agency” or “Secretary” shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other federal agency.

E. “Services” shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor and its Subcontractors under this Order, including services performed, workmanship, and materials furnished or used in performing services.

F. “Subcontractor” shall mean any subcontractor or supplier of any tier who supplies goods and/or services to Subcontractor in connection with Subcontractor’s obligations under this Order. The person or organization entering into this Order with NWP.

G. “Subcontractor’s managerial personnel” shall mean any of the Subcontractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

   1. All or substantially all of the Subcontractor’s business;

   2. All or substantially all of the Subcontractor’s operation at a plant or separate location at which this Order is being performed; or

   3. A separate and complete major industrial operation connected with performing this Order.

H. “Supplies” shall mean equipment, components, parts and materials, including, but not limited to, raw materials, components, intermediate assemblies, end products, lots of supplies and data to be provided by Subcontractor and its Subcontractors pursuant to this Order.

I. “Vendor Data” shall mean any and all information, data and documentation to be provided by Subcontractor and its Subcontractors under this Order.

J. “Work” shall mean supplies, services, and vendor data provided by Subcontractor and its Subcontractors and all work performed with respect thereto, pursuant to this Order.

K. “NWP” shall mean the Nuclear Waste Partnership LLC, Waste Isolation Pilot Plant (WIPP).

L. NWP “Purchasing Representative” shall mean a person with the authority to execute, administer, and terminate the contract, and make related determinations and findings. The term includes certain authorized representatives of the Purchasing Representative acting within the limits of their authority as delegated by the Purchasing Representative.

GENERAL

The terms and conditions of these General Provisions and those set forth elsewhere in this Order apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor, and NWP objects to and shall not be bound by any such additional or different terms and conditions.

A. This Order, which term shall be deemed to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Order, and merges and supersedes all prior agreements, understandings, commitments, representations, writings, and discussions between them. Any prior obligations, conditions, warranties, or representations will bind neither of the parties with respect to the subject matter of this Order. The parties agree that recourse may not be had to allege prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.

B. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.

C. The headings used in this Order are not to be construed as modifying, limiting, or expanding in any way the scope or extent of the provisions in this Order.

D. All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.

E. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:

   1. Purchase order;

   2. These General Provisions;

   3. Statement of work;

   4. Other provisions of this Order, whether incorporated by reference or otherwise.

F. Subcontractor shall perform all work pursuant to this Order as an independent contractor. If any part of the work is subcontracted, Subcontractor is responsible for having that subcontracted work comply with the terms of this Order. No act or order of NWP shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by NWP under this Order shall be construed to make or constitute NWP the employer or joint employer of any of the employees of Subcontractor or any Subcontractor.

SUBCONTRACTING

A. Subcontractor shall select Subcontractors on a competitive basis to the maximum practicable extent

consistent with the objectives and requirements of this Order.

B. "Subcontract" as used in this article includes, but is not limited to, purchase orders, and changes and modifications to purchase orders. The Subcontractor shall notify NWP reasonably in advance of entering into any subcontract if:

1. The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

2. The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this Order;

3. The proposed subcontract has experimental, developmental or research work as one of its purposes; or

4. The proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $10,000 or of any items of facilities.

C. In the case of a proposed subcontract that:

1. Is of the cost-reimbursement, time-and-materials, or labor-hour type, and is estimated to exceed $10,000, including any fee

1. Is proposed to exceed $100,000, or

2. Is one of a number of subcontracts with a single Subcontractor, under this Order, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph B above shall include the information specified below.

   a) A description of the supplies or services to be subcontracted

   b) Identification of the type of subcontract to be used

   c) The proposed subcontract price identification of the proposed Subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained and the Subcontractor's cost or price analysis

   d) The Subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other Order provisions

   e) The Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this Order

   f) A negotiation memorandum reflecting -

      1) The principal elements of the subcontract price negotiations

      2) The most significant considerations controlling establishment of initial or revised prices

      3) The reason cost or pricing data were or were not required

      4) The extent, if any, to which the Subcontractor did not rely on subcontractor's cost or pricing data in determining the price objective and in negotiating the final price

      5) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data was not accurate, complete, or current; the action taken by the Subcontractor; and the effect of any such defective data on the total price negotiated

6) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and

7) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

D. The Subcontractor shall obtain NWP's written consent before placing any subcontract for which advance notification is required under paragraph (B) above.

E. Consent by NWP to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this Order, or (3) to relieve the Subcontractor of any responsibility for performance.

F. No subcontract placed under this Order shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).

G. The Subcontractor shall give NWP immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this Order, with respect to which the Subcontractor may be entitled to reimbursement from NWP.

H. The Subcontractor shall insert in each price redetermination or incentive price revision subcontract under this Order the substance of the paragraph "Quarterly limitation of payments statement" of the clause at FAR 52.216-5, Price Redetermination - Prospective, 52.216-6, Price Redetermination - Retroactive, 52.216-16, Incentive Price Revision - Firm Target, or 52.216-17, Incentive Price Revision - Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.

Additionally, the Subcontractor shall include in each cost-reimbursement subcontract under this Order a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in the paragraph above, in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

I. To facilitate small business participation in subcontracting, the Subcontractor agrees to provide progress payments on subcontracts under this Order that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this Order. The Subcontractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

J. NWP and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR subpart 44.3.

SECTION A

SECTION A ARTICLES APPLY REGARDLESS OF ORDER PRICE

The Clauses identified below by reference incorporates, with the same force and effect as if they were given in full text. Upon request, NWP will make their full text available. Reference Article A.38, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

A.1 ACCOUNTS, RECORDS, AND INSPECTION
Also Reference DEAR 970.5232-3

A. Accounts

The Subcontractor 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, revenues or other applicable credits, fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Subcontractor under this Order. The system of accounts employed by the Subcontractor shall be satisfactory to NWP and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and Audit of Accounts and Records

All books of accounts and records relating to this Order shall be subject to inspection and audit by NWP and DOE at all reasonable times, before and during the period of retention provided for in paragraph D. below, and the Subcontractor shall afford DOE and NWP proper facilities for such inspection and audit.

C. Audit of Subcontractors' Records

The Subcontractor 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 NWP and the Contracting Officer.

D. Disposition of Records

Except as agreed upon by the NWP and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this Order shall be the property of the Government, and shall be delivered to NWP or the Government or otherwise disposed of by the Subcontractor either as NWP 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 provided in this Order, all other records in the possession of the Subcontractor relating to this contract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this Order or otherwise disposed of in such manner as may be agreed upon by the NWP and the Subcontractor.

E. Reports

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this Order as NWP may from time to time require.

F. Inspections

DOE shall have the right to inspect the work and activities of the Subcontractor under this Order at such time and in such manner as it shall deem appropriate.

G. Subcontracts

The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraph D. through this paragraph G. of this article in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor.

H. Comptroller General

The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the subcontractor's directly pertinent records involving transactions related to this subcontract and to interview any employee regarding such transactions.

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

Nothing in this subcontract shall be deeded to preclude an audit by the Government Accountability Office of any transaction under this subcontract.

A.2 ALLOWABLE COSTS, AND PAYMENT FAR 52.216-7
(M & O Contracts) (Modified)
Also Reference PAYMENTS AND ADVANCES (Modified) DEAR 970.5232-2

A. Invoicing

NWP shall make payments to Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every month, in amounts determined to be allowable by NWP in accordance with FAR 31.2 and, as supplemented, DEAR 931.2 the date of this Order, and the terms of this Order. Determinations regarding allowable costs will be based on those provisions of FAR 31.201-2(d) and FAR 31.201-3. Subcontractor may submit to NWP, in such form and reasonable detail as NWP may require, an invoice supported by a statement of the claimed allowable cost for performing this Order. A reasonable detail of costs includes, but is not limited to:

1. Labor categories used

2. Hours expended for each category

3. Direct labor rate(s) for each category

4. Direct labor costs for each category

5. Overhead rate(s) and total

6. G&A (if applicable)

7. Travel costs (number of trips, number of days in a travel status, location of travel)

8. Material costs and other direct costs (with identification of large purchases).

B. Terms of Payment

The date of payment shall, subject to any contrary terms on the face hereof, be computed from NWP's receipt of an acceptable invoice. Drafts will not be honored.

C. Reimbursing Costs

1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (ii) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only-

   a) Those recorded costs that, at the time of the request for reimbursement, Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for this Order;

   b) When Subcontractor is not delinquent in paying costs of Order performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

      1) Materials issued from Subcontractor’s inventory and placed in the production process for use on this Order;

      2) Direct labor;

      3) Direct travel;

      4) Other direct in-house costs; and

      5) Properly allocable and allowable indirect costs, as shown in the records maintained by Subcontractor for purposes of obtaining reimbursement under Government contracts; and

      6) The amount of progress payments that have been paid to Subcontractor’s subcontractors under similar cost standards.

2. Subcontractor’s contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided that Subcontractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until Subcontractor actually makes the payment.

3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph H of this article, allowable indirect costs under this Order shall be obtained by applying indirect cost rates established in accordance with paragraph E.

4. Any statements in specifications or other documents incorporated in this Order by reference designating performance of services or furnishing of materials at Subcontractor’s expense or at no cost to NWP shall be disregarded for purposes of cost reimbursement under this article.

D. Small Business Concerns

A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for items or services purchased directly for this Order, even though the concern has not yet paid for those items or services.

E. Final Indirect Cost Rates

1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR 42.7 and DEAR 942.7, in effect for the period covered by the indirect cost rate proposal.

2. Subcontractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by NWP, submit to the cognizant Contracting Officer responsible for negotiating its final indirect costs rates and, if required by DOE procedures, to the cognizant audit activity, proposed final indirect cost rates for that period and supporting cost data specifying the subcontract and/or lower tier subcontract to which the rates apply. The proposed rates shall be based on Subcontractor's actual cost experience for that period. The appropriate Government representative and Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of Subcontractor's proposal.

3. Subcontractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

   a) The agreed-upon final annual indirect cost rates,

   b) The bases to which the rates apply;

   c) The periods for which the rates apply;

   d) Any specific indirect cost items treated as direct costs in the settlement; and

   e) The affected subcontract and/or lower tier subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Order. The understanding is incorporated into this Order upon execution.

4. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the "Disputes" Article.

F. Billing Rates

Until final annual indirect cost rates are established for any period, NWP shall reimburse Subcontractor at billing rates approved by the Government or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

1. Shall be the anticipated final rates; and

2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

G. Quick-Closeout Procedures

When Subcontractor and NWP agree, the quick-closeout procedures of FAR 42.7 may be used.

H. Audit

At any time or times before final payment, NWP may have Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be:

1. Reduced by amounts found by NWP not to constitute allowable costs or

2. Adjusted for prior overpayments or underpayments.

I. Final Payment

1. Subcontractor shall submit a completion invoice, designated as such, promptly upon completion of the Work, but no later than 1 year (or longer, as NWP may approve in writing) from the completion date. Upon approval of that invoice, and upon Subcontractor's compliance with all terms of this Order, NWP shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

2. Subcontractor shall pay to NWP any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Subcontractor or any assignee under this Order, to the extent that those amounts are properly allocable to costs for which Subcontractor has been reimbursed by NWP. Reasonable expenses incurred by Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by NWP. Before final payment under this Order, Subcontractor, and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

   a) An assignment to NWP, in form and substance satisfactory to NWP, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Subcontractor has been reimbursed by NWP under this Order; and

   b) A release discharging NWP, the Government, and their officers, agents, employees, and assigns from all liabilities, obligations, and claims arising out of or under this Order, except-

      1) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

      2) Claims (including reasonable incidental expenses) based upon liabilities of Subcontractor to third parties arising out of the performance of this Order; provided, that the claims are not known to Subcontractor on the date of the execution of the release, and that Subcontractor gives notice of the claims in writing to NWP within 6 years following the release date or notice of final payment date, whichever is earlier; and

      3) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Subcontractor under the patent clauses of this Order, excluding, however, any expenses arising from Subcontractor's indemnification of NWP or the Government against patent liability.

A.3 APPROVALS

The approval by NWP of designs, work drawings, specifications, reports, or any other data submitted by Subcontractor hereunder shall not affect or relieve Subcontractor from any responsibility to furnish said items in full conformance with the requirements of this Order.

A.4 ASSIGNMENT

NWP may assign this Order to the DOE or to such party as DOE may designate to perform NWP's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, NWP shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of NWP's obligations. Subcontractor shall not assign or transfer this Order or any

interest herein, or claims hereunder, without the prior written consent of NWP or NWP's assignee.

A.5 CLASSIFIED INVENTIONS

A. Approval for filing a foreign patent application. The Subcontractor 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 NWP Procurement Representative.

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

C. Inclusion of clause in subcontracts. The Subcontractor 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.

A.6 COMPLIANCE

Except as otherwise directed by NWP, Subcontractor shall procure without additional expense to NWP, all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory, and political subdivisions in which the work is performed.

A.7 COMPLIANCE WITH EMPLOYEE CONCERNS

If this Order requires the Subcontractor or a subcontractor to perform any part of the work on the WIPP Site, the Subcontractor shall comply with all DOE and NWP Policies and Procedures relating to Employee Concerns. Failure of the Subcontractor or subcontractor to comply with the provision of this article shall be a material breach of this Order.

A.8 CONFIDENTIALITY OF INFORMATION

A. To the extent that the work under this Order requires that the Subcontractor be given access to confidential or proprietary business, technical or financial information belonging to the Government, NWP or other companies, the Subcontractor 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 NWP or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

1. Information which, at the time of receipt by the Subcontractor, is in public domain;

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

3. Information which the Subcontractor 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 Subcontractor can demonstrate was received by it from a third party who did not require the Subcontractor to hold it in confidence.

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

C. The Subcontractor agrees, if requested by the NWP or the Government, to sign an agreement identical, in all material respects, to the provisions of this article, with each company supplying information to the Subcontractor under this Order, and to supply a copy of such agreement to NWP. From time to time upon request of NWP, the Subcontractor shall supply NWP with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor received such information.

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

A.9 DISPUTES, ARBITRATION, AND GOVERNING LAW

A. DISCUSSION, NEGOTIATION, AND AGREEMENT

Seller and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of arbitration as described in Section B.

B. ARBITRATION

For all disputes between the parties pertaining to the Order which are not disposed of by agreement, the parties shall consider arbitration.

1. Arbitration. Any claim for monetary damages arising out of or relating to this contract, or the breach thereof, may be submitted for resolution to [*Name of Arbitration Organization*] and shall be resolved by [*Name of Arbitration Organization*] in accordance with its rules of procedure (except as such rules may be otherwise modified herein by written agreement of the parties).

2. Remedy. Any such arbitral award shall be in satisfaction of all claims for money damages, by either party against the other, arising out of the same factual circumstance.

3. Confidentiality. Except as may be otherwise required by law or order of a court of competent jurisdiction, neither a party nor an arbitrator may disclose the existence, content, or result of any proceeding hereunder without the prior written consent of both parties. However, the content and result of an arbitration proceeding will be disclosed to the DOE contracting officer and may be reviewed by DOE counsel. The confidentiality of all proceedings shall be preserved by the parties.

4. Finality. All arbitration proceedings shall be final, binding, and enforceable in any court of competent jurisdiction. Except as otherwise prescribed in sections 9-11 of the Federal Arbitration Act, Pub. L. No. 68-401 (1925) (codified as amended at 9 U.S.C. § 1 et seq.), there shall be no opportunity for judicial review of arbitral decisions rendered. The award of the arbitrator(s) shall be accompanied by a reasoned opinion, issued in writing. Judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

5. In the event arbitration is agreed upon the site of the proceedings shall be Carlsbad, New Mexico.

6. Fees. The mediator or arbitrator shall allocate costs, except that there shall be no pre-decisional interest costs. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable rules of arbitration, and shall also be responsible for its own attorney's fees. In the event a party fails to comply with the arbitrator's award, the other party is entitled to costs of suit, including reasonable attorney's fees, for having to defend or enforce the award.

C. LITIGATION

All disputes between the parties pertaining to the Order, which is not disposed of by agreement, shall be decided by litigation. Litigation initiated by either party against the other to resolve a dispute arising under or pertaining to the Order shall be instituted in the United States Federal District Court for the district of New Mexico (or in another division of that district should the parties so agree) if that court has jurisdiction, and neither party will move for a change of venue or, pursuant to 28 U.S.C. 1404, for a transfer from said district or division. If the United States district court for the district of New Mexico does not have jurisdiction but another United States district court does, such litigation will be initiated in the latter. In the event no United States district court has jurisdiction, the litigation will be initiated (and insofar as the parties may control, conducted through the trial stage) in the district court of the judicial district of the state of New Mexico, in Eddy County. The Seller shall proceed diligently, with the performance of the Order, pending final resolution of any dispute arising under or related to the Order.

The terms of the Order shall be construed and interpreted in accordance with the body of law applicable to the procurement of goods and services by the Government. Insofar as the said body of law is not dispositive of a dispute, the laws of the state of New Mexico shall govern.

D. CONTINUATION OF WORK

There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this subcontract pending final resolution of any dispute arising under this subcontract between the parties hereto or between Seller and its subtier subcontractors.

A.10 FIXED FEE

NWP shall pay Subcontractor for performing this Order the fixed fee specified; provided, that after payment of 85% of the fixed fee, NWP may withhold further payment of fee until a reserve is set aside in an amount that NWP considers necessary to protect the Government's interests. This reserve shall not exceed 15% of the total fixed fee; or $100,000, whichever is less.

A.11 GRATUITIES

The Government and the NWP prohibit their employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Seller and/or its employees shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Government or the NWP and shall not accept any gratuity or special favor from individuals or organizations with whom the Seller

is doing business or proposing to do business in accomplishing work under the Order. The Order is subject to the provisions of the Anti-Kickback Act (41 U.S.C. 51-58).

A.12 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL - SAFETY DATA

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 a National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet (MSDS) submitted under this contract.

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

C. This list must be updated during performance of the contract whenever the Subcontractor 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 MSDS, 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 MSDS prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

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

F. Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Subcontractor of any responsibility or liability for the safety of Government, Subcontractor, or Subcontractor personnel or property.

G. Nothing contained in this clause shall relieve the Subcontractor 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 –

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

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

c) 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.

4. This clause shall flow down to all lower-tier subcontracts.

A.13 INSPECTION OF SUPPLIES AND SERVICES

A. The Subcontractor shall provide and maintain an inspection system acceptable to NWP covering the services and/or supplies, fabricating methods, and special tooling under this Order. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NWP during Order performance and for as long afterwards as the Order requires.

B. NWP and the Government have the right to inspect and test the services and/or supplies, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. NWP and the Government may also inspect the plant or plants of the Subcontractor or any Subcontractor engaged in the Order performance. NWP shall perform inspections and tests in a manner that will not unduly delay the Work.

C. If NWP performs inspection or testing on the premises of the Subcontractor or a Subcontractor, the Subcontractor shall furnish and shall require Subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

D. Unless otherwise specified, NWP shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted or rejected earlier.

E. At any time during Order performance, but no later than 6 months (or such other time as may be specified in the Order) after acceptance of the supplies to be delivered under this Order, NWP may require the Subcontractor to replace or correct any Supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. Except as otherwise provided in paragraph H, the cost of replacement or correction shall be included in allowable cost, determined as provided in the “Allowable Cost and Payment” article, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance Supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

F. If any of the services performed do not conform with Order requirements, NWP may require the Subcontractor to perform the services again in conformity with Order requirements for no additional fee. When the defects in services cannot be corrected by re-performance, NWP may:

1. Require the Subcontractor to take necessary action to ensure that future performance conforms to Order requirements and

2. Reduce any fee payable under this Order to reflect the reduced value of the services

performed.

G. If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, NWP may:

1. By contract or otherwise, perform the replacement or correction and charge to the Subcontractor any increased cost or make an equitable reduction in any fixed fee paid or payable under this Order;

2. Require delivery of undelivered Supplies at an equitable reduction in any fixed fee paid or payable under this Order; or

3. Terminate this Order for default.

a) Failure to agree on the amount of increased cost to be charged to the Subcontractor or to the reduction in the fixed fee shall be a dispute.

b) If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Order requirements, NWP may:

- By Contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

- Terminate this Order for default.

H. Notwithstanding paragraphs F and G above, NWP may at any time require the Subcontractor to correct or replace, without cost to NWP, nonconforming supplies, and/or correctly re-perform nonconforming services, if the non-conformances are due to

1. Fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or

2. The conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor and any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

I. This article applies in the same manner to corrected or replacement Supplies as to Supplies originally delivered.

J. The Subcontractor shall have no obligation or liability under this Order to replace Supplies that were nonconforming at the time of delivery, except as provided in this article or as may be otherwise provided in this Order.

K. Except as otherwise specified in this Order, the Subcontractor's obligation to correct or replace Government-Furnished Property shall be governed by the article pertaining to Government property.

A.14 INSURANCE-LIABILITY TO THIRD PARTIES

A. As to the work to be done or performed by the Subcontractor on premises owned or controlled by the NWP, the Government, or the premises of other NWP subcontractors, the Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury (including death) or damage to property sustained in connection with, or to have arisen out of the acts or omissions of, the Subcontractor or its lower-tier subcontractors, agents, or employees. The

Subcontractor shall indemnify and hold harmless the NWP from and against any and all claims, demands, actions, causes of action, suits, damages, expenses (including attorney fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable to the acts or omissions of the Subcontractor or its lower-tier subcontractors, agents, or employees. Nothing in the foregoing shall be construed to require the Subcontractor to indemnify and save harmless the NWP from any liability arising out of or resulting from a nuclear incident.

B. Unless otherwise specified in the Subcontract, Seller agrees that it shall obtain and maintain during the performance of any Work at the Facility Site and until the acceptance thereof, the insurance described below and shall be carried with insurance companies with at least a Best's "A" rating. Seller will furnish to Contractor three (3) copies of the certificate(s) evidencing such insurance prior to commencing performance or physically present on the Facility site under the Subcontract.

1. Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Work is to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars ($500,000) for trauma, each accident; five hundred thousand dollars ($500,000) for disease, each person and five hundred thousand dollars ($500,000) disease, policy limit.

2. Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Work. The insurance required by this subparagraph 2 shall have the following limits of liability:

   a) Third Party Bodily Injury and Property Damage Liability: $1,000,000 combined single limit per occurrence and $2,000,000 combined single limit general aggregate, with such limits available to the Project.

3. Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Work, with not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

4. If professional services are involved, Professional Liability Insurance with not less than $1,000,000 per occurrence with a 24 months discovery period after completion of the work.

C. The following endorsements shall be included in the above insurance coverages:

1. Thirty (30) days advance written notice in the event of cancellation, non-renewal or material change of any policy. Language referring to "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be stricken from the certificate of insurance.

2. Contractor and Owner named as additional insureds (except on workers' compensation and professional liability). The additional insured endorsement used shall in no event be less restrictive in terms of coverage provided to the additional insured than what is provide for in the standard ISO endorsement No. CG 20 10 11 85, "Additional Insured - Owners, Lessees, or Contractors (Form B.)"

3. A waiver of subrogation in favor of Contractor and Owner.

4. Severability of Interest or Separation of insureds.

5. Seller's insurance is primary and any insurance maintained by Contractor is considered excess and non-contributory.

D. The Subcontractor agrees to comply (and require its lower-tier subcontractors to comply) with all applicable laws, rules, and regulations with respect to state industrial insurance or worker's/workmen's compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal income taxes, and further agrees to indemnify the NWP and the Government against, and to save and hold harmless the NWP and the Government from, any and all liability and expense with respect to claims against the NWP or the Government which may result from the failure or alleged failure of the Subcontractor or of any of its lower-tier subcontractors to comply therewith.

E. Seller shall insert the substance of this Article in lower tier subcontracts under the Subcontract that require work at the facility site and shall require lower-tier subcontractors to provide and maintain the insurance required in this Article or elsewhere in the subcontract.

A.15 KEY PERSONNEL

The personnel specified in this Order are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Subcontractor shall notify NWP reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by NWP provided that NWP may ratify in writing such diversion and such ratification shall constitute the consent of NWP required by this article. The Order may be amended from time to time, or an administrative letter may be issued, to either add or delete personnel, as appropriate.

A.16 LIMITATION OF FUNDS

Note: This article is applicable only if this Order is partially funded. If this Order is fully funded, see Article A.48.

A. The parties estimate that performance of this Order will not cost NWP more than the estimated cost specified. The Subcontractor agrees to use its best efforts to perform the Work and all obligations under this Order within the estimated cost.

B. The Funding Schedule specifies the amount presently available for payment by NWP and allotted by this Order, the items covered, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NWP will allot additional funds incrementally to the Order up to the full estimated cost to NWP specified in the Funding Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, Work on the Order up to the point at which the total amount paid and payable by NWP under the contract approximates but does not exceed the total amount actually allotted by NWP to the Order.

C. The Subcontractor shall notify NWP in writing whenever it has reason to believe that the costs it expects to incur under this Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Contract by NWP. The notice shall state the estimated amount of additional funds required continuing performance for the period specified in the Funding Schedule.

D. Sixty days before the end of the period specified in the Funding Schedule, the Subcontractor shall notify NWP in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Order or for any further period specified in the Funding Schedule or otherwise agreed upon, and when the funds will be required.

E. If, after notification, additional funds are not allotted by the end of the period specified in the Funding Schedule or another agreed-upon date, upon the Subcontractor's written request NWP will terminate this Order on that date in accordance with the provisions of the Termination clause of this Order. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and NWP may terminate this Order on that later date.

F. Except as required by other provisions of this Order, specifically citing and stated to be an exception to this article—

1. NWP is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NWP to this Order; and

2. Subcontractor is not obligated to continue performance under this Order (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the amount then allotted to the Order by NWP until NWP notifies the Subcontractor in writing that the amount allotted by the Subcontractor has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NWP to this Order.

G. The estimated cost shall be increased to the extent that the amount allotted by NWP, exceeds the estimated cost specified in the Funding Schedule.

H. No notice, communication, or representation in any form other than that specified in subparagraph F(2) above, or from any person other than cognizant NWP Purchasing Agent, shall affect the amount allotted by NWP to this Order. In the absence of the specified notice, NWP is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NWP to this Order, whether incurred during the course of the Order or as a result of termination.

I. When and to the extent that the amount allotted NWP to the Order is increased, any costs the Subcontractor incurs before the increase that are in excess of the amount previously allotted by NWP shall be allowable to the same extent as if incurred afterward, unless NWP issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

J. Change Notice shall not be considered an authorization to exceed the amount allotted by NWP specified in the Funding Schedule, unless they contain a statement increasing the amount allotted.

K. Nothing in this article shall affect the right of NWP to terminate this Order. If this Order is terminated NWP and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Order, based upon the share of costs incurred by each.

L. If NWP does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Funding Schedule equaling the percentage of completion of the Work contemplated by this Order.

A.17 LAWS, REGULATIONS AND DOE 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. The Subcontractor shall comply with those DOE orders and other directives applicable to management and operating (M&O) contractors, with all applicable departmental policies, plans, programs, and

management directives identified and listed in the subcontract. This requirement applies to all sub-tier subcontractors.

B. The Subcontractor shall comply with the directives identified in such list. The Subcontractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of the Subcontract, for additional costs, fees, or extensions of time of performance relating to compliance with the directives in such list.

C. The Subcontractor shall comply with additional DOE directives, local directives and revisions thereto, pursuant to and in accordance with the Changes clause of the Subcontract, with respect to changes in directives within the general scope of the Subcontract;

D. Copies of Department of Energy Directives may be obtained without charge from:

U.S. Department of Energy
Distribution Section
Federal Building
Washington, DC 20585

E. Upon receipt of a new or revised Order, the Subcontractor shall review it for consistency with the other terms of the Subcontract and for impacts on funding, labor, and other provisions of the Subcontract. If the Subcontractor considers the Order to be consistent with the other terms of the Subcontract, it can be implemented within existing funds, labor, and other provisions of the Subcontract, and the implementation will not have a negative impact on the cost, schedule, or other obligations of the Subcontractor, the Subcontractor shall establish an implementation schedule, and so advise the Contracting Officer, through the NWP, within thirty (30) calendar days of receipt.

In the event the Subcontractor considers the Order to be inconsistent with the other terms of the Subcontract, or the requirements of the Order cannot be implemented within existing funding, labor, and other provisions of the Subcontract, the Subcontractor shall so advise the Contracting Officer, through the NWP, within thirty (30) calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, labor, and other provisions of the Subcontract. After evaluation of the Subcontractor's position, the Contracting Officer shall issue direction to the NWP and the Subcontractor, pursuant to the clause entitled "Changes" concerning appropriate implementation of the Order.

The Subcontractor shall incorporate the substance of this clause with respect to applicable orders, excluding any reference to the Changes clause, in lower-tier subcontracts for performance of work at the site and as directed by the Contracting Officer.

A.18 SUSPECT COUNTERFEIT ITEMS

A. A suspect item is one in which there is an indication by visual inspection, testing, or other information that it may not conform to established Government or industry-accepted specifications or national consensus standards. A counterfeit item is a suspect item that is a copy or substitute without legal right or authority or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer. Such items may be labeled to represent a different class of parts, or used and/or refurbished parts, complete with false labeling, that are represented as new parts.

B. Suspect/counterfeit items <u>do not include</u> non-conforming items resulting from inadequate design or production quality control. Such items shall be handled in accordance with Buyer’s nonconforming item procedures.

C. Materials and items furnished by the Seller to Company under this Agreement shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this Agreement whether on or off the WIPP site.

A.19 MONTHLY ACCRUAL REPORT

Subcontractor shall submit the following report to NWP to arrive no later than the 20th day of each month.

A. Amounts invoiced but not paid, including invoice numbers and dates.

B. Amounts of actual costs and estimated costs incurred and fee earned through the last day of the month the report is due, which have not been invoiced.

A.20 NEW MEXICO GROSS RECEIPTS TAX AND COMPENSATING TAX - FAR 52.229-10

By reason of NWP's Nontaxable Transaction Certificate, the Seller shall not include in the price any state and local taxes except those which were paid by the Seller to third parties in acquiring the items which are the subject matter of this Agreement. The price does include all applicable Federal Taxes.

A. The Subcontractor 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.

B. Out-of-state purchase of tangible personal property by the Subcontractor 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 Subcontractor only if such property is not used for Federal purposes.

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

D. The Subcontractor agrees to insert the substance of the clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

A.21 OCCUPATIONAL SAFETY AND HEALTH ACT

Subcontractor warrants that any and all Work performed off the NWP and/or Supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to be shipped or Work is to be performed pursuant to this Order.

A.22 OZONE DEPLETING SUBSTANCE

Without limiting any of the other Articles herein, Subcontractor warrants that all of the supplies furnished under this Order have been completely and accurately labeled pursuant to the requirements of 40 CFR Part 82, "Protection of Stratospheric Ozone", or that such supplies do not require such labeling.

A.23 PASSAGE OF TITLE AND LIENS

A. Title to the Supplies shall pass to the Government at the place of delivery to NWP. If purchased F.O.B. shipping point, delivery to the carrier shall be deemed to be delivery to NWP.

B. Subcontractor agrees to furnish the Work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the Work or Subcontractor's or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor agrees promptly, on demand of NWP and at Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. Subcontractor agrees to save NWP harmless from all liens, claims, or demands in connection with the Work.

C. Except as otherwise provided in this Order,

1. Subcontractor shall be responsible for the loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection;

2. After delivery to NWP at the designated point and prior to acceptance or rejection by NWP, Subcontractor shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of NWP or the Government acting within the scope of their employment; and

3. Subcontractor shall bear all risks as to rejected Supplies after rejection.

A.24 PRICE-ANDERSON AMENDMENTS ACT

A. The Department of Energy has promulgated Procedural Rules For DOE Nuclear Activities (10 CFR 820), Nuclear Safety Management (Quality Assurance Rules) (10 CFR 830), and DOE Contractor Employee Protection Rules (10 CFR 708), and Occupational Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988, as amended. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

B. This Order is subject to the requirements of the above rules if the performance of work involves products, activities or operations in areas covered by the Price Anderson Nuclear Hazards Indemnity Clauses of this Order.

C. Indemnification of NWP

To the extent permitted by law, the Subcontractor assumes full responsibility and shall indemnify, save harmless, and defend NWP and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234(a) or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Subcontractor, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Subcontractor's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234(a) or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq.

A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Subcontractor upon request.

A.25 PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Subcontractor desires to release or publish, shall be submitted to NWP for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of NWP. The Project Sponsor is the DOE. Subcontractor shall include all provisions of this article including this sentence in all subcontracts or purchase orders under this Order. NWP's approval shall not be unreasonably withheld.

A.26 RIGHTS TO PROPOSAL DATA (Technical)

Except for the technical data contained on those pages of Subcontractor's proposal which are specifically identified in the Order with specific reference to this article and asserted by Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, NWP and 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 Order is based.

A.27 REPORTING OF ROYALTIES

If any royalty payments are directly involved in this Order or are reflected in the Order price, Subcontractor agrees to report in writing to NWP during the performance of this Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Order together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or NWP of any individual payments or royalties shall not preclude the Government or NWP at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this article shall be included in all subcontracts that are expected to exceed $25,000.

A.28 SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES

A. Subcontractor is liable to NWP for fines and penalties assessed by any governmental entity against NWP or DOE as a result of Subcontractor's failure to perform its work under the Order in compliance with the requirements of the Order.

B. Subcontractor shall indemnify and hold harmless NWP and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against NWP or DOE.

A.29 SUBCONTRACT PARTICIPATION BY FOREIGN NATIONALS

A. The Subcontractor shall obtain the approval of NWP, in writing, prior to the employment of, or participation by, any foreign national in the performance of work under this Order or any lower tier Order.

B. The Subcontractor shall obtain the approval of NWP, in writing, prior to any visit to a DOE, NWP, BSRI, BNFLSRC or B&NWP facility by any foreign national in connection with work being performed under this Order. Approval requests shall meet the time requirements

established by DOE Notice 142.1, “Unclassified Visits and Assignments by Foreign Nationals.”

A.30 TECHNICAL DIRECTION

A. Performance of the Work under this Order shall be subject to the technical direction of the NWP project manager or technical representative. The term “technical direction” is defined to include, without limitation:

1. Directions to the Subcontractor which redirect the Subcontractor’s efforts, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Work.

2. Provision of written information to the Subcontractor, which assists in the interpretation of drawings, specifications or technical portions of the work description.

3. Review, and where required by the Order, approval of technical reports, drawings, specifications and technical information to be delivered by the Subcontractor to NWP under the Order.

B. Technical direction must be within the scope of work stated in the Order. The Project Manager or Technical Representative does not have the authority to, and may not, issue any technical direction which:

1. Constitutes an assignment of additional work outside the scope of Work;

2. Constitutes a change as defined in Article A.4;

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

4. Changes any of the expressed terms, conditions or specifications of the Order; or

5. Interferes with the Subcontractor’s right to perform the terms and conditions of the Order.

C. The project manager or technical representative shall issue all technical directions in writing.

D. The Subcontractor shall proceed promptly with the performance of technical directions duly issued by the project manager or technical representative in the manner prescribed by this article and within the Subcontractor’s authority under the provisions of this article. If, in the opinion of the Subcontractor, any instruction or direction by the project manager or technical representative falls within one of the categories defined in B.(1) through (5) of this article, the Subcontractor shall not proceed. Rather the Subcontractor shall notify the NWP Purchasing Representative in writing within five (5) working days after receipt of any such instruction or direction and shall request the NWP Purchasing representative to modify the Order accordingly. Upon receiving the notification from the Subcontractor, the NWP Purchasing representative shall:

1. Advise the Subcontractor in writing within thirty (30) days after receipt of the Subcontractor’s letter that the technical direction is within the scope of the Contract effort and does not constitute a change under the “Changes” article;

2. Inform the Subcontractor in writing within thirty (30) days after receipt of the Subcontractor’s letter not to perform under the direction and to cancel the direction; or

3. Advise the Subcontractor within a reasonable time that NWP will issue a written change notice.

E. A failure of the Subcontractor and the NWP Purchasing Representative to agree that the technical direction is within the scope of the Work, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the “Disputes” article.

A.31 TOXIC SUBSTANCES CONTROL ACT OF 1976

Subcontractor warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the toxic Substances Control Act (Public Law 94-469).

A.32 TRAVEL RESTRICTIONS

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.

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:

- Federal Travel Regulations (FTR) for travel within the 48 states;
- Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
- 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 Subcontractor travel.

A.33 NWP POLICY ON OPPORTUNITY

All subcontractors, vendors and suppliers are notified that it is the policy of the NWP to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action shall be taken on the part of all NWP subcontractors, vendors and suppliers to insure adherence to such laws.

APPLICABLE WHEN SELLER’S PERSONNEL WORK ON DOE WIPP SITE COVERED WORKPLACES/ACTIVITIES

A.34 ACCIDENT PREVENTION

A. The Seller shall provide and maintain work environments and procedures which will (1) safeguard the public and NWP personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities, (2) avoid interruptions of NWP operations and delays in project completion dates, and (3) control costs in the performance of the Subcontract.

B. For the purposes of paragraph A above on Subcontracts for construction or dismantling, demolition, or removal of improvements, the Seller shall:

1. Provide appropriate safety barricades, signs, and signal lights;

2. Comply with the standards issued by the Secretary of Labor at 29 CFR 1926 and 29 CFR Part 1910; and

3. Ensure that any additional measures the NWP determines to be reasonably necessary for the purposes are taken.

C. Whenever the NWP becomes aware of any noncompliance with these requirements or any condition that poses a serious or imminent danger to the health or safety of the public or Government personnel, the NWP shall notify the Seller verbally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Seller or the Seller's representative at the work site, shall be deemed sufficient notice of the noncompliance and that the corrective action is required. After receiving the notice, the Seller shall immediately take corrective action. If the Seller fails or refuses to promptly take corrective action, the NWP may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Seller shall not be entitled to any equitable adjustment of the Subcontract price or extension of the performance schedule on any stop work order issued under this article.

D. The Seller shall take all reasonable precautions in the performance of the work under the Order to protect the safety and health of employees and of members of the public, and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of the NWP. When required by either the subcontract's statement of work, special conditions, and/or the PO/Subcontract Deliverable Schedule, the Seller shall submit a Job Hazard Analysis to the NWP for review and approval; the JHA must be approved prior to the start of any on-site performance. The NWP shall notify the Seller, in writing, of any noncompliance with the provisions of the article and the corrective action to be taken after receipt of such notice, and the Seller shall immediately take corrective action. In the event that the Seller fails to comply with said regulations or requirements of the NWP, the Buyer may, without prejudice to any other legal or contractual rights of the NWP, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the NWP. The Seller shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

E. The Seller shall insert this article, including this paragraph E, with appropriate changes in the designation of the parties, in all lower-tier subcontracts.

F. Before commencing the work, the Seller shall:

1. Submit a written proposed plan for implementing this article. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in the Subcontract work performance and a plan for controlling these hazards; and

2. Meet with a representative(s) of the NWP to discuss and develop a mutual understanding relative to the administration of the overall work safety program under the Subcontract to accommodate the additional work, heeding any direction that may be provided by the NWP. The Seller shall not commit or permit any act that will interfere with the performance of work by any other subcontractor or by Government employees.

A.35 ENVIRONMENTAL COMPLIANCE (Applies only to work performed on Government facilities.)

A. Definitions. As used in the Subcontract, the following capitalized terms shall have the meaning set forth herein:

1. "Hazardous Waste" shall mean any waste or constituent regulated under the Resource Conservation and Recovery Act (RCRA) as amended (42 U.S.C. 6901 et seq.), or as set forth in 40 CFR 260 et seq., or in any similar laws of any state or local governmental authority having jurisdiction over the place(s) where (a) the work under the Subcontract will be performed, or (b) any Hazardous Waste will be generated, shipped, stored, treated, or disposed of. Briefly, a waste is a Hazardous Waste if it exhibits a hazardous characteristic (ignitable, corrosive, reactive, or toxic), and/or it is listed in Subpart D of the RCRA regulations.

2. For this document, the term "Hazardous Substance" shall be used generically to include any "Hazardous Substance" as defined in the Comprehensive Environmental Response, Compensations and Liability Act as amended (42 U.S.C. 9601 et seq.), any "Hazardous Material" as regulated under the Hazardous Materials Transportation Act as amended (49 U.S.C. 1801 et seq.), or Occupational Safety and Health Act (OSHA) 29 CFR 1910 Subpart H, "Oil" as defined in or under the Clean Water Act as amended (33 U.S.C. 1251 et seq.), any “Chemical or Toxic or Hazardous Substance or Material” as defined in the Toxic Substance Control Act (TSCA) (15 U.S.C. 2601 et seq.), and, without limitation, any other substance or material identified as a toxic or hazardous substance, chemical, or material, as such terms may be defined in or under any other applicable local, state, or federal law, statute, ordinance, code, rule, or regulation. The term "Hazardous Substance" shall also include any container, device, material, component, and/or item, of which a Hazardous Substance as defined above is a constituent, or in which a Hazardous Substance as defined above is contained.

3. "Environmental Procedure" shall mean a document or series of documents published by the NWP and incorporated into the Order by reference, which set forth and establish the policy for compliance with environmental laws and regulations by Subcontractors and suppliers to the NWP, including lower-tier subcontractors and suppliers at any tier.

4. A "Preexisting Hazardous Substance" shall mean a Hazardous Substance(s) and/or Hazardous Waste that are already present at a WIPP facility through no act or omission of the Seller or its representatives.

B. Environmental Compliance. In addition to and without limitation on the general duty of the Subcontractor, the Subcontractor shall comply with all applicable laws and regulations as indicated below:

1. The Subcontractor and all of its subcontractors and suppliers of any tier, and its and their employees and/or agents (hereinafter called "representatives") shall comply with all health, safety, and environmental laws, statutes, ordinances, rules, regulations, permits, and orders regulating or dealing with a Hazardous Substance(s) or Hazardous Waste that are or become applicable during the term of the Order.

2. During the term of the Order, the Subcontractor shall obtain and maintain all permits, licenses, certificates, approvals, and other authorities required to conduct the work and perform the services specified under the Order.

3. Without limiting the applicability and generality of the foregoing subparagraph B.1 and B.2, the Subcontractor shall comply with any appropriate provisions of applicable environmental procedures with respect to work or services that will be performed, or equipment or materials that will be supplied under the Order.

C. Management of Hazardous Substances and Hazardous Waste.

1. The Subcontractor shall notify the NWP immediately if and when it encounters a preexisting Hazardous Substance(s) or preexisting Hazardous Waste in the performance of the work. Such notice shall identify the location and time of the encounter and shall specify, to the extent known or suspected by the Subcontractor or its representatives, the nature and extent of the contamination. The Subcontractor shall take no action with respect to such preexisting Hazardous Substance(s) without the written consent of the NWP. The foregoing shall not apply (a) to a preexisting Hazardous Substance(s) identified in the Order or as otherwise formally identified by the NWP to be encountered in the performance of the work, or (b) if the Order calls for the remediation or removal of the preexisting Hazardous Substance(s) or areas contaminated therewith, in either of which events the Seller shall be finally responsible for the proper and safe handling and management of the preexisting Hazardous Substance(s). The Subcontractor and its representatives shall cooperate with the NWP or its designee regarding such preexisting Hazardous Substance(s) and make available its records and personnel with respect thereto.

2. In no event shall the Subcontractor or any of its representatives bring or allow the bringing of Hazardous Waste on or into the work site unless specifically allowed by the Order or otherwise formally approved by the NWP. In the event that the Subcontractor or any of its representatives introduce or allow a Hazardous Substance(s) or Hazardous Waste to be introduced on or into the site, generate any Hazardous Waste(s), or handle a preexisting Hazardous Substance(s) or areas contaminated therewith as part of its obligations under the Order, at the work site or in connection with the work or services, the Subcontractor shall be solely responsible for all costs and liabilities associated with such Hazardous Substance(s) or Hazardous Waste and shall handle, manage, store, treat, or dispose of such Hazardous Substance(s) or Hazardous Waste in strict compliance with all applicable laws, statutes, ordinances, rules, regulations, permits, orders, and environmental procedures. Without limiting the generality of the foregoing, the Subcontractor shall (a) provide a Material Safety Data Sheet (MSDS) for each Hazardous Substance, (b) perform and maintain all required record keeping, reporting, manifesting, labeling, and other documentation, (c) provide all required safety and health devices or equipment and training, and (d) ensure that all such Hazardous Substance(s) or Hazardous Waste is managed, transported, treated, stored, or disposed of at lawfully permitted or licensed facilities in accordance with all applicable laws, regulations, and ordinances.

3. The provisions of this article relating to Hazardous Substances shall not apply to such material or substances wholly and routinely contained within equipment or materials utilized by the Subcontractor in the performance of the work, provided that there is no leak, spill, discharge, or release of the Hazardous Substance (e.g., sulfuric acid in batteries).

D. Liability. The Subcontractor shall assume and indemnify the NWP against any and all costs, damages, expenses, and liability due to any personal injury, death, property damage, environmental harm, environmental impairment, fines, penalties, or otherwise, arising or resulting from:

1. The failure of the Subcontractor or any of its representatives to comply with the provisions of this article.

2. The receipt, handling, transportation, treatment, storage, or disposal of a Hazardous Substance(s) or Hazardous Waste where it is the responsibility of the Subcontractor or its representatives as included under the Order or applicable law.

3. The negligent or intentionally tortious conduct of the Subcontractor or its representatives regarding or in connection with a Hazardous Substance(s) or Hazardous Waste.

A.36 ENVIRONMENT, SAFETY, AND HEALTH - GOVERNMENT OWNED OR LEASED

In performing work under this contract, the Subcontractor 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. This requirement applies to all sub-tier subcontractors.

A. For the purpose 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 Subcontractor 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 Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor'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 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 NWP and the Subcontractor. These agreed upon conditions and requirements are requirements of the contract and binding on 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. A Safety Management Plan is required only when so specified in the Statement of Work in the Subcontract.

8. This requirement applies to all sub-tier subcontractors.

C. The Subcontractor 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 Subcontractor will:

1. Define the scope of work;

2. Identify and analyze hazards associated with the work;

3. Develop and implement hazard controls;

4. The ES&H Management Program and Implementation Plan must meet the requirements of a Safety Management system found in DEAR 970.5204-2.

5. Perform work within controls; and

6. Provide feedback on adequacy of controls and continue to improve safety management.

7. When such a plan as described in this paragraph is required by the subcontract, the provisions for Records as found in DEAR 970.5232-3 also applies.

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 Subcontractor shall submit to the NWP documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NWP. Guidance on the preparation, content, review, and approval of the System will be provided by the NWP. On an annual basis, the Subcontractor shall review and update, for NWP 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 Subcontractor shall comply with, and assist the NWP in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or if, at any time, the Subcontractor 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 NWP may issue an order stopping work in whole or in part. Any stop work order issued by the NWP under this clause (or issued by the NWP 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 NWP issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NWP. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppages ordered in accordance with this clause.

H. The Subcontractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of performer of the work.

I. The Subcontractor 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 Subcontractor may require that the lower-tier subcontractor submits a Safety Management System for the NWP's review and approval.

J. When such a plan as described in this paragraph is required by the subcontract, the provisions for records as found in DEAR 970.5226-2 also apply.

A.37 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.

B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the NWP Computer Security organization. Adherence to the Plan is required during the performance of this Order.

C. Material or data containing UCNI shall be disposed of in the same manner that the Supplier disposes of other classified material or data. Material or data may be returned to the NWP central classified destruction facility with the prior approval of the STR.

D. The supplier shall report to the NWP Security Office or the NWP Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.

E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.

F. If the supplier has a formally designated Classification Officer, the Classification Officer-

1. Serves as a Reviewing Official for information under his/her cognizance;

2. Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and

3. May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.

G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

A.38 SITE ACCESS AND SECURITY REQUIREMENTS

A. Foreign Nationals:

Access or entry by a foreign national (not a citizen of the United States) to the WIPP Site, DOE Skeen-Whitlock Building (SWB) or any other Government leased building is not allowed without first being approved by CBFO Security and the CBFO Manager. All unclassified visits (30 days or less) and assignments (more than 30 days) of foreign nationals will be managed consistent with the Department of Energy Notice and Policy 142.1.

A minimum of 45 days advance notice is required for indices checks of all foreign nationals that are citizens of a sensitive country, require access to a security area, or access to a sensitive subject. A Security Plan is required for unclassified foreign visits and assignments. Contact WIPP Security for required forms and guidelines. At a minimum, the following information must be provided:

- Biographical and personal information, including date and place of birth, place/nature of employment.
- Passport, visa and/or PRA Card (Immigration and Naturalization Service information, as required).
- Purpose of visit; actual dates, subjects and areas to be visited.
- Identification of host group and escort responsibilities. (The host will be required to prepare and process all forms and provide the Security Plan and the Host Report).
- For delivery activities, the WIPP Site main Warehouse will act as the host group and Warehouse personnel will escort the foreign national(s). The Buyer will notify the supplier once the indices check and approvals have been completed.

B. Operating Condition of Delivery Vehicles and Equipment:

Delivery vehicles and equipment entering the WIPP Site, or the SWB or any other Government leased facility, must be in a safe operating condition. Vehicles and equipment must have no leaks, dripping fluids, or any other defects that pose a hazard to personnel and/or the environment. Defective vehicles will not be allowed to enter the WIPP Site or the SWB receiving areas and must be repaired before access is granted.

C. Property Searches:

WIPP Security Officers will inspect all vehicles entering and leaving the WIPP Site. Upon entering the WIPP Site, searches are conducted to prevent bringing the following items onto the site:

- Weapons
- Ammunition
- Explosives
- Illegal drugs
- Alcohol

- Other dangerous instruments or material that could harm or damage people, property or the environment
- Animal companions

Upon leaving the WIPP Site and the SWB, searches may be conducted to prevent the unauthorized removal of government property.

D. Security Badges and GFE/GFP Property:

Subcontractors are responsible for all WIPP issued security badges and entry key cards for all of their employees who have access to the WIPP Site, SWB or other Government leased facilities. The Subcontractor will provide to NWP, a listing of all employees who will need access to the WIPP Site or other satellite facilities. This listing will be provided to and approved by the NWP Procurement Buyer who will present the listing to WIPP Security prior to Subcontractor employees gaining access to the WIPP site. The listing will contain the Subcontractor's company name, name of the employee(s) and the NWP Subcontract Technical Representative name. WIPP Security reserves the right to collect picture badges on a daily basis from those Subcontractors that demonstrate inability to adequately control their security badge(s).

Prior to final payment, any and all security badges, Government Furnished Equipment or Government Furnished Property must be returned and accounted for. NWP reserves the right to withhold final payment pending adequate disposition of security badges and property.

The Subcontractor will immediately report, within 24 hours, to WIPP Security any lost or mis-placed security badge or key card. The security badges and the key cards are the property of the U.S. Department of Energy. Subcontractor personnel will maintain and display their badges in accordance with WIPP policies and procedures.

E. WIPP Site Access Requirements:

<u>30 days or less for Subcontractor Employees</u>: Subcontractor personnel who are required to work on WIPP Property for 30 days or less unescorted will be required to complete GET-300. GET-300 consists of completing a video presentation followed by an examination administered by the Security Department. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor badge and will be allowed to access the WIPP site unescorted during normal work hours for a period of 30 days. To obtain the badge each day, the Subcontractor employee will show Security picture identification and then pick up their badge at the main Guard & Security Building. The Subcontractor employee will be required to turn in his/her badge at the gatehouse each day upon leaving the site. Completion of this training does not allow the Subcontractor personnel access to the SWB unescorted.

<u>30 days or more</u>: Subcontractor personnel who are required to work on WIPP Property for 30 days or more must complete the GET Initial Training within 30 days of being assigned to the WIPP. GET training consists of a two day instruction program, with an examination being given at the end of the session. Upon successful completion of the examination, the Subcontractor employee will be issued a contractor picture badge good for a period of one year. Upon completion of the assignment, the Subcontractor personnel will surrender their badge to security.

F. Skeen-Whitlock Building Access Requirements:

<u>30 days or less for Subcontractor Employees</u>: Subcontractor personnel who are required to work at the SWB for 30 days or less unescorted will be required to complete GET-301. GET-301 consists of reading the safety brochure and watching the SWB safety orientation video

followed by an examination administered by the SWB Receptionist. Upon successful completion of the examination, the Subcontractor employee will be issued a "T" badge and will be allowed to access the SWB unescorted during normal work hours for a period of 30 days. Upon completion of the assignment, the Subcontractor employee will surrender their badge to security. Completion of this training does not allow Subcontractor personnel access to the WIPP site unescorted.

30 days or more: Same requirements as noted above for WIPP Site Access.

A.39 WORKER SAFETY AND HEALTH PLAN

The Department of Energy has promulgated procedures/rules for the implementation of a Worker Safety and Health Program, Title 10 CFR 851 ("851"). NWP has integrated 851 as a NWP Worker Safety and Health Plan along with the Integrated Safety Management System (ISMS) description, and the NWP Voluntary Protection Program (VPP). Together, those documents serve as the overall plan for worker safety and health at WIPP. Upon implementation of 851 effective February 9, 2007, these rules govern the conduct of any entity including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier, that has responsibilities for performing work at a covered DOE site in furtherance of a DOE mission. Violation of the applicable rules provides a basis for the assessment of civil and or criminal penalties under 851.

Indemnification of NWP
To the extent permitted by law, the subcontractor assumes full responsibility and shall indemnify, save harmless, and defend NWP and its principal subcontractors, their agents, officers, employees and directors from any civil and or criminal penalties or liabilities under 851 et seq., arising out of activities of the subcontractor, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The subcontractor's obligation to indemnity and hold harmless shall expressly include attorney's fees and other reasonable costs of defending any action or proceeding instituted under 851 or its implementing regulations.

A copy of 851, NWP' implementing Worker Safety and Health Plan, and *The General Safety Rules for Contractors and their Subcontractors* is available at our web site:
http://www.wipp.energy.gov/proc/html/business.htm

SECTION B, GOVERNMENT FLOWDOWN CLAUSES INCORPORATED BY REFERENCE

(Applicable at the dollar thresholds indicated in the Tables or as noted in the Instructions.

B.1 **SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

A. This Subcontract incorporates FAR and DEAR Clauses below by reference, with the same force and effect as if they were given in full text. FAR clauses may be accessed electronically at https://www.acquisition.gov/far/. DEAR clauses can be found at http://www.management.energy.gov/DEAR.htm. Upon request, NWP will make their full text available. Supplemental definitions that apply to certain terms in these clauses are included in the following paragraphs.

B. "Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.

C. "CONTRACTOR" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).

D. "Government" means CONTRACTOR. except that the term "Government" or its authorized representatives shall retain its original meaning where (1) the provision pertains to,

addresses or governs rights and obligations in property (real, personal or intellectual), (2) a right, act, authorization or obligation can be granted or performed only by the Government (e.g., under the Nuclear Hazards Indemnity Agreement provision), (3) the intent of the provision is to provide benefit or protection to the Government, or (4) when access to the SUBCONTRACTOR'S proprietary financial or other data is required.

E. "Contracting Officer" means the CONTRACTOR'S Procurement Representative.

F. "Lower-Tier Subcontractor" means any party entering into an agreement with the SUBCONTRACTOR or any Lower Tier SUBCONTRACTOR for the furnishing of supplies or services required for performance of this Subcontract.

The following clauses are applicable to <u>all Subcontracts:</u>

CLAUSE	TITLE	INSTRUCTION
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014)	
FAR 52.209-6	Protecting the Governments Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEP 2006)	
FAR 52.211-5	Material Requirements (AUG 2000)	
FAR 52.215-16	Facilities Capital Cost of Money (JUN 2003)	
FAR 52.215-17	Waiver of Facilities Capital Cost of Money (OCT 1997)	
FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	
FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	
FAR 52.222-3	Convict Labor (JUN 2003)	
FAR 52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation (JUL 2005)	
FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	
FAR 52.222.54	Employment Eligibility Verification	
FAR 52.223-6	Drug Free Workplace (MAY 2001)	
FAR 52.223-18	Contractor Policy to Ban Text Messaging While Driving (SEP 2010)	
FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	
FAR 52.227-10	Filing of Patent Applications – Classified Subject Matter (DEC 2007)	
FAR 52.232-20	Limitation of Cost (APR 1984)	
FAR 52.237-3	Continuity of Services (JAN 1991)	
FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)	
FAR 52.242-13	Bankruptcy (JUL 1995)	
FAR 52.242-15	Stop Work Order (AUG 1989)	
FAR 52.243-2	Changes (Aug 1987) Alternate II (APR 1984)	
FAR 52.244-6	Subcontracts for Commercial Items (DEC 2010)	
FAR 52.247-64	Preference for Privately-Owned U.S. Flag Commercial Vessels (FEB 2006)	
FAR 52.249-6	Termination (Cost Reimbursement) (MAY 2004)	
FAR 52.249-14	Excusable Delays (APR 1984)	
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	
DEAR 952.204-71	Sensitive Foreign Nations Controls (APR 1994)	Attachment 1 applies to this clause.
DEAR 952.211-71	Priorities and Allocations (Atomic Energy) (APR 2008)	
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	The obligation of NWP to indemnify the Subcontractor is subject only to the indemnification provided to NWP under this clause.
DEAR 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	
DEAR 970.5228-1	Insurance, Litigation and Claims (AUG 2009)	
DEAR 970.5245-1	Property (DEC 2000)	

The following clause is applicable to Subcontracts that exceed $3,000:

CLAUSE	TITLE	INSTRUCTION
52.222-54	Employment Eligibility Verification (JAN 2009)	Notwithstanding any other audit provisions contained within this subcontract, CONTRACTOR reserves the right, from time to time as CONTRACTOR deems appropriate, to request satisfactory proof of compliance from SUBCONTRACTOR and all Lower Tier Subcontracts.

The following clauses are applicable to Subcontracts that exceed $10,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	
FAR 52.222-26	Equal Opportunity (SEP 2010)	
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)	

The following clause is applicable to Subcontracts that exceed $15,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.222-36	Affirmative Action for Workers With Disabilities (OCT 2010)	

The following clauses are applicable to Subcontracts that exceed $100,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010)	
FAR 52.215-14	Integrity of Unit Prices (OCT 2010)	
FAR 52.222-2	Payment of Overtime Premiums (JUL 1990)	
FAR 52.222-35	Equal Opportunity for Veterans (SEP 2010)	
FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2010)	
FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)	
FAR 52.227-1	Authorization and Consent (DEC 2007)	
FAR 52.232-17	Interest (OCT 2010)	Applies with the addition of a paragraph (h) to read as follows: "(h) No interest is payable to the Subcontractor for any claim or voucher the Subcontractor may submit for payment except as specifically imposed by a Court on any judgment obtained by the Subcontractor or as otherwise provided herein."
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)	

The following clauses are applicable to Subcontracts that exceed $150,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)	

FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	
FAR 52.215-23	Limitations on Pass-through Changes (OCT 2009)	
FAR 52.227-3	Patent Indemnity (APR 1984)	This article does not apply, except for supplies offered to the general public, if FAR 52.227-1, Alternate 1 has been made applicable under Section F.

The following clauses are applicable to Subcontracts that exceed $500,000:

CLAUSE	TITLE	INSTRUCTION
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	
DEAR 970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Reorganization Act for the Fiscal Year 1993 (DEC 2000)	

The following clause is applicable to Subcontracts that exceed $650,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.230-2	Cost Accounting Standards (OCT 2008)	This clause is applicable unless an exemption applies under 48 CFR 9903.201-1.
FAR 52.230-3	Disclosure and consistency of Cost Accounting Standards (OCT 2008)	This clause is applicable to subcontracts where modified coverage has been determined to be applicable to the subcontractor, unless an exemption applies under 48 CFR 9903.201-1.
FAR 52.230-6	Administration of Cost Accounting Standards (JUN 2010)	This clause is applicable if either of the CAS clauses at FAR 52.230-2 or 52.230-3 above applies

The following clause is applicable to Subcontracts that exceed $700,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.219-9	Small Business Subcontracting Plan (JUL 2010)	This clause does not apply to small business concerns

The following clauses are applicable to certain Subcontracts as noted:

CLAUSE	TITLE	INSTRUCTION
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (APR 2010)	This clause applies if the value of this subcontract exceeds $5 million, and the performance period exceeds 120 days)
FAR 52.203-14	Display of Hotline Poster(s) (DEC 2007)	Clause applies if Subcontract value is in excess of $5 million, except when the Order is performed entirely outside the United States.
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (SEP 2007)	Clause apples where the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine physical access to a Federally-controlled information system.

FAR 52.208-8	Required Sources for Helium and Helium Usage Data (APR 2002)	Clause applies to any Subcontract involving a major helium requirement (200,000 standard cubic feet of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year).
FAR 52.215-10	Price Reduction for Defective Certified Cost or Pricing Data (Aug 2011)	This clause applies if the Subcontract amount is expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later, unless a
FAR 52.215-11	Price Reduction for Defective Certified Cost or Pricing Data - Modifications (Aug 2011)	This clause applies for any modification to this Subcontract involving a price adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date
FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2010)	This clause applies if the Subcontract meets the applicability requirements of FAR 15.408-8(g).
FAR 52.215-18	Reversion of Adjustment of Plans for Post Retirement Benefits(PRB) Other than Pensions (JUL 2005)	This clause applies if the Subcontract meets the applicability requirements of FAR 15.408-8(j).
FAR 52.215-19	Notification of Ownership Changes (OCT 1997)	This clause applies if the Subcontract meets the applicability requirements of FAR 15.408-8(k).
FAR 52.222-41	Service Contract Act of 1965 as Amended (NOV 2007)	This clause applies to subcontracts that are principally for services if such subcontract involves employment by SUBCONTRACTOR of service employees, as defined in DOL Regulations.
FAR 52.222-42	Statement of Equivalent Rates for Federal Employees (MAY 1989)	This clause applies if the Service Contract Act applies to the subcontract.
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706	This clause applies to subcontracts covered by the Service Contract Labor Standards (Service Contract Act) or the Wage Rate Requirements (Construction), formerly known as Davis-Bacon Act

FAR 52.224-1	Privacy Act Notification (APR 1984)	This clause applies if Work involves design, development, or operation of a system of records on individuals
FAR 52.224-2	Privacy Act (APR 1984)	This clause applies if Work involves design, development, or operation of a system of records on individuals
FAR 52.225-1	Buy American Act – Supplies (FEB 2009)	This clause applies if subcontract involves the furnishing of supplies.
FAR 52.225-8	Duty-Free Entry (OCT 2010)	Clause applies if foreign supplies valued in excess of $15,000 may be imported into the United States and for which duty free entry may be obtained.
FAR 52.227-1	Authorization and Consent (DEC 2007) with Alternate I (APR 1984) FAR 27.201	This clause, with Alternate 1, shall apply to subcontracts, including any lower-tier subcontracts, for Research and Development work at any dollar value.
FAR 52.227-14	Rights in Data – General (JUN 1987) – as modified pursuant to DEAR 927.409(a) (1)	This clause is applicable to 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.
FAR 52.229-10	New Mexico Gross Receipts and Compensation Tax (APR 2003)	This clause applies if the scope calls for services to be performed in whole or in part in New Mexico.
FAR 52.245-1	Government Property (AUG 2010)	This clause applies to subcontracts where Government property will be furnished to the SUBCONTRACTOR for use in the performance of the subcontract.
FAR 52.247-63	Preference for U.S. Flag Air Carriers (JUN 2003)	This clause applies to subcontracts that may involve international air transportation.

DEAR 952.204-2	Security (AUG 2009)	This clause applies to any subcontract where SUBCONTRACTOR employees are required to possess access authorizations (L or Q security clearances).
DEAR 952.204-70	Classification/Declassification (SEP 1997)	This clause applies to any subcontract where SUBCONTRACTOR employees are required to possess access authorizations (L or Q security clearances).
DEAR 952.204-73	Facility Clearance (MAY 2002)	This clause applies to any subcontract where subcontractor employees are required to possess access authorizations (L or Q security clearances).
DEAR 952.204-77	Computer Security (AUG 2006)	Clause applies to any subcontract that may provide access to computers owned, leased or operated on behalf of the DOE.
DEAR 952.209-72	Organizational Conflicts of Interest Alternate I (AUG 2009)	This clause applies to subcontracts for Advisory and Assistance Services that exceed $150,000.
DEAR 952.217-70	Acquisition of Real Property (APR 1984)	Clause applies to any Subcontract where acquisition of real property, as described in the clause, is expected to be made, and the Government will assume title or will be responsible for payment or reimbursement of the costs.
DEAR 952.227-11	Patent Rights – Retention by the Contractor (Short Form) (JUN 1997)	This clause applies if the subcontract is for experimental, developmental, or research work and the SUBCONTRACTOR is a small business or not-for-profit organization.
DEAR 952.227-13	Patent Rights – Retention by the Government (JAN 1997)	This clause applies if the subcontract is for experimental, developmental, or research work and the SUBCONTRACTOR is NOT a small business or not-for- profit organization
DEAR 952.247-70	Foreign Travel (JUN 2010)	This clause applies to any subcontract that may involve foreign travel.

DEAR 952.5204-1	Counterintelligence (DEC 2010)	This clause applies to any subcontract where SUBCONTRACTOR employees are required to possess access authorizations (L or Q security clearances).
DEAR 970.5204-3	Access to and Ownership of Records (JUL 2005)	This clause applies if: 1) the value exceeds $2,000,000, or 2) if a critical task determined by NWP, or 3) if the clause at DEAR 970.5223-1 is applicable to the subcontract.
DEAR 970.5208-1	Printing (DEC 2000)	This clause applies if this subcontract requires printing (as the term is defined in Title 1 of the U. S. Government Printing and Binding Regulations)
DEAR 970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000)	This clause applies if work is to be performed on site.
DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites (DEC 2000)	This clause applicable if subcontract amount exceeds $25,000 and the scope of work involves access to classified information or special nuclear materials; transportation of hazardous materials to or from a
DEAR 970.5227-8	Refund of Royalties (AUG 2002)	This clause applies to any subcontract that involves the payment of royalties in excess of $250.

SECTION C

SECTION C ARTICLES APPLY ONLY IF SPECIFIED IN THE ORDER, REGARDLES OF ORDER PRICE

C.1 CLASSIFICATION

In the performance of the work under this Order, the Subcontractor shall ensure that all information and equipment originated or generated under this Order in a classified or potentially classified subject area are identified, controlled and handled in accordance with DOE directives regarding classification instructions and guidance and issued via a NWP Authorized Derivative Classification/Reviewing Official and furnished to the Subcontractor by the NWP Purchasing Representative. Every subcontract and purchase order issued hereunder involving the origination or generation of classified information or equipment shall require that in the performance of such subcontract or purchase order, the Subcontractor or Subcontractor shall ensure that all such information or equipment in a classified or potentially classified subject areas are identified, controlled and handled in accordance with DOE directives regarding classification instructions and guidance and issued via a NWP Authorized Derivative Classification/Reviewing Official and furnished to the Subcontractor by the NWP Purchasing Representative.

C.2 COLLECTIVE BARGAINING AGREEMENTS (DEC 2000) - DEAR 970.5222-1 (M & O CONTRACTS)

C.3 COMMERCIAL BILL OF LADING (FEB 2006) - FAR 52.247-1

C.4 CONTRACTORS ORGANIZATION (DEC 2000) - DEAR 970.5203-3

C.5 COPYRIGHTS FOR NWP DIRECTED TECHNICAL PERFORMANCE

Subcontractor shall cause its employee(s) to assign to NWP all rights under the copyright in all works of authorship prepared at the direction of NWP during the term of this Order. Subcontractor shall include terms in its arrangements with its employee(s) to require such assignments to NWP. To the extent that such works of authorship are considered to be works made for hire for Subcontractor, Subcontractor agrees to assign and does hereby assign all of its rights under the copyrights in such works to NWP or the U. S. Government.

C.6 COST REDUCTION PROPOSALS

A. General

The Seller is encouraged to develop, prepare, and submit Cost Reduction Proposals (CRPs) to the NWP through the Buyer for review by the DOE WIPP Project Office NWP. If accepted, the Seller shall share in any net savings realized from accepted CRPs in amounts agreed to by the parties.

B. Procedure for submission of CRPs: Each CRP submitted by the Seller shall include, at a minimum, the following information:

1. A description of the existing requirements, the proposed CRP requirements, comparative advantages and disadvantages of each, and the effect of the proposed CRP on these requirements.

2. A description of the changes that must be made if the proposed CRP is accepted, including changes or waivers to design requirements, regulatory requirements, DOE policy documents, etc.

3. A separate, detailed cost estimates for the existing requirements and the proposed CRP. The estimate for the proposed CRP shall take into account the costs of implementing the CRP, including the costs the DOE or the NWP may incur in implementing the proposed CRP.

4. A statement of the time by which acceptance of the proposed CRP must be issued in order to achieve the maximum cost reduction.

5. The suggested sharing period for the proposed CRP.

C. Calculation of Estimated Net Savings: Estimated net savings shall be calculated by subtracting the total cost of the proposed CRP (to the Seller, the NWP, and the DOE) from the total cost of the existing requirements.

D. Acceptance for Negotiation or Rejection of CRPs.

The DOE will notify the Seller through the NWP by letter from the DOE NWP that the CRP will be accepted for negotiation with the Seller or rejected. The only CRPs that will be accepted for negotiation are those which:

1. Demonstrate a result in a reduction in the total agreed upon estimated cost for the annual period (October 1 through September 30); and

2. Will not reappear as costs in subsequent annual periods. The items to be negotiated shall, at a minimum, include the estimated net savings of the change in requirements proposed by the CRP, the estimated reduction in the agreed upon estimated cost for the annual period, and the Seller's share of such net savings. If the CRP is rejected, the letter will set forth the reasons for rejection. If the parties are unable to negotiate acceptable terms, the CRP will be deemed to have been rejected. Until an agreement is negotiated, the Seller shall perform in accordance with existing requirements. Negotiated agreements will be reflected in a CRP Implementation Agreement signed by both the Seller and the NWP.

E. Audit of Actual Savings

The DOE or the NWP shall have the right to audit the actual costs of an accepted CRP to determine the extent of actual savings. If the actual savings are significantly more or less than the estimated savings of the CRP or the reduction of the estimated cost for the annual period, the amount awarded under the CRP shall be adjusted.

F. Relationship to Other Incentives

Only those benefits of an accepted CRP not rewardable under goal achievement objectives shall be rewarded under this clause.

G. Subcontracts

The Seller may include an appropriate clause similar to this clause in any lower-tier subcontract. In calculating any estimated net savings in a CRP under the Subcontract, the Seller's preparation, submission, testing, development, and implementation costs shall include any of the Seller's allowable costs, and any CRP incentive payments to a lower-tier
Subcontractor clearly resulting from the acceptance of such CRP. The Seller may choose any arrangement for the Seller’s CRP incentive payments, provided that the payments shall not reduce the DOE's share of Subcontract net savings.

H. Disputes

Actions taken under this clause shall not be subject to the "Disputes" clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

C.7 FIRST ARTICLE APPROVAL - TESTING (SEP 1989) - FAR 52.209-4

C.8 PROTECTION OF GOVERNMENT BUILDINGS - EQUIPMENT, AND VEGETATION (APR 1984) FAR 52.237-2

C.9 REPORTING REQUIREMENTS

A. Work Breakdown Structure (WBS).

Except as provided for elsewhere in the contract, the WBS, as approved by the NWP, shall provide the basis for all reports required under this subsection. The WBS shall be derived
from the Statement of Work (SOW) of this contract and shall otherwise conform to any implementation guidance, which may be provided by the NWP.

B. Periodic Plans and Reports

The Subcontractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the NWP. These periodic plans and reports shall be submitted at the interval, and to the addresses in the quantities as specified by the NWP. Where specific forms are required for individual plans and reports, the NWP

shall provide such forms to the Subcontractor. The plans and reports expected to be submitted by the Subcontractor are described generally as follows:

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

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

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

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

5. Plans and reports shall be prepared by the Subcontractor in such a manner as to provide for –

   a) Consistency with the contract SOW, the approved WBS, and the existing accounting structure; and

   b) Correlation of data among the various plans and reports

C. Changes in Work Effort

The reporting system established and maintained by the Subcontractor pursuant to this subsection shall recognize changes in work effort directed by the NWP, as provided for in the Work Control System. During performance of this contract, the Subcontractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the SOW or Work Authorization Directives (WADs). The Subcontractor's reporting system shall be able to provide for the following at the WAD level or such lower level, as specified by the NWP.

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:

   a) Changes to the authorized work; and

   b) 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;

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 NWP of such changes.

D. The Subcontractor agrees to provide the NWP, or designated authorized representatives, access to information and documents comprising the Subcontractor's reporting system described in (B) above.

E. The Subcontractor 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 NWP, or

2. The NWP determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

C.10 RESPONSE ACTION SUBCONTRACTOR INSURANCE

A. The Subcontractor shall obtain and maintain during the performance of this Order such Environmental Impairment Insurance and/or Contractor's Pollution Insurance as stated in the scope of work; or, in the absence of such a statement, as is reasonable and necessary considering the scope of work to be performed.

B. Such insurance shall be in amounts and terms as will eliminate or significantly reduce the United States' DOE and NWP's exposure to liabilities to third parties for damage resulting from remedial action.

C. NWP and the Government shall be endorsed as Additional Insured.

D. The provisions of this Article shall be subordinate to the Article of this Order entitled, Nuclear Hazards Indemnity Agreement.

C.11 RIGHT OF FIRST REFUSAL OF EMPLOYMENT

The scope of work described herein as currently being performed by Buyer (NWP) employees and award of an order may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Seller needs to hire additional employees beyond those already part of its existing work force as of the date of this solicitation in order to satisfy the performance requirements set forth by the scope of work in this solicitation, the Seller must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Order, the Buyer shall make available to the Seller a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Order and be in effect from the date of award of the Order.

C.12 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE II - FAR 52.227-14 MODIFIED TO INCLUDE DEAR 927.409(a) (DEC 2007)

C.13 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE III - FAR 52.227-14 MODIFIED TO INCLUDE DEAR 927.409(a) (DEC 2007)

C.14 RIGHTS IN DATA – GENERAL AND INCLUDING ALTERNATE IV - FAR 52.227-14 MODIFIED TO INCLUDE DEAR 927.409(a) (DEC 2007)

C.15 ADDITIONAL DATA REQUIREMENTS (JUN 1987) - FAR 52.227-16
Note: This Article shall apply only if FAR 5227-14 is applicable to this Order.

C.16 SCIENTIFIC AND TECHNICAL INFORMATION

Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:

A. Text will be submitted in native software (that is compatible with the suite of document creation software currently used at NWP) (fonts identified) or in RTF (rich text format).

B. Embedded objects and files that are linked to a document must be supplied as well, as follows:

1. Raster images (for example, photographs) will be submitted as TIFF or BMP (bit map) @ resolution >100 dpi.

2. Vector art (for example, line art) will be submitted as GIF images.

3. Data-driven displays (e.g., spreadsheet charts) must be accompanied by data used to generate them.

C.17 AFFIRMATIVE PROCUREMENT

In performance of this Agreement, Subcontractor shall provide biobased products and other applicable items composed of the highest percentage of recovered/recycled materials that are consistent with published minimum content standards and requirements as stated in the following issuances:

A. Executive Order 1301 of September 14, 1998, entitled “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition”.

B. Section 6002 of the Resource Conversation and Recovery Act (RCRA) of 1976 , as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822).

C. Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time a guidelines for the procurement of products that contain recovered/recycled materials.

D. “U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials” and related guidance document(s), as they are identified in writing by the DOE.

The subcontractor shall also prepare and submit a report identifying the types of environmentally preferable items provided, the quantities provided and the dollar value expended per item classification, in accordance with direction from the Contract Administrator.

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