GENERAL PROVISIONS
FOR
FIXED PRICE ORDERS

WITH PROVISIONS FOR
LABOR HOURS and TIME AND MATERIALS SUBCONTRACTS

This set of General Provisions consists of Sections A through C.
The clauses in Section C apply only if specifically stated in the Subcontract. Section D contains additional clauses that apply to Labor Hours and Time and Materials Subcontracts.

(FFP/LH/T&M 2/18, Rev. 4)

Nuclear Waste Partnership
WIPP
An AECOM-led partnership with BWXT and AREVA

Waste Isolation Pilot Plant
Carlsbad, New Mexico

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GENERAL PROVISIONS FOR FIXED PRICE ORDERS
WITH PROVISIONS FOR LABOR HOURS and TIME AND MATERIALS 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. "Buyer" shall mean NWP representative(s) authorized to enter into the Order with the Subcontractor and to effect modifications and take other action hereunder. Where the context requires, the term "Buyer" may also refer generally to NWP.

B. "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts. In FAR and DEAR clauses referenced herein, the term may be interchangeable with NWP and/or Buyer.

C. "DEAR" shall mean the Department of Energy Acquisition Regulations.

D. “DOE" shall mean the United States Department of Energy or any duly authorized representative thereof including any successor or predecessor. The term includes the term “Government.”

E. "FAR" shall mean the Federal Acquisition Regulations.

F. "Order" shall mean the agreement for the furnishing of supplies and services to NWP. The term includes the term "Subcontract."

G. "Subcontractor" shall mean the person or organization entering into the Order with NWP. The term includes the term "Seller."

H. "NWP" shall mean Nuclear Waste Partnership LLC, Waste Isolation Pilot Plant.

GENERAL

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

B. The failure of either party to enforce at any time any of the provisions of the 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 provisions, nor in any way to affect the validity of the Order or any parts thereof, or the right of either party there after to enforce each and every provision.

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

D. All references herein to DEAR or FAR are those in effect on the date of the Order.

E. Any inconsistency in this solicitation or Order shall be resolved by giving precedence in the following order: (1) the schedule, including the facing sheet (excluding the specifications), (2) representations and other instructions, (3) Order clauses, (4) other documents, exhibits, and attachments, and (5) the specifications.

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

G. The Order does not bind or purport to bind the Government except as specifically provided in the Order, nor give privity of contract to the DOE through NWP' relationship with the DOE.

PART I Clauses Applicable to Fixed Price Subcontracts

SECTION A - APPLIES REGARDLESS OF THE ORDER PRICE

A.1 APPROVALS

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

A.2 ASSIGNMENT

A. NWP may assign the Order, in whole or in part, to the DOE or to such party as the DOE may designate to perform NWP' obligations hereunder. Upon receipt by the Seller of written notice that the DOE or a party so designated by the DOE has accepted an assignment of the Order, NWP shall be relieved of all responsibility hereunder and the Seller shall thereafter look solely to such assignee for performance of NWP' obligations. The Seller shall not assign or transfer the Order or any interest herein, or claims hereunder, without the prior written consent of NWP or NWP' assignee.

B. The Seller shall not furnish or disclose to any assignee under the Subcontract any classified document (including the Subcontract) or information related to work under the Subcontract until NWP authorizes such action in writing.

A.3 CHANGES - FIXED PRICE - FAR 52.243.1 (AUG 1987)

A. At any time, by written order, the Contractor may make changes within the general scope of this subcontract in any one or more of the following:

1. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

2. Method of shipment or packaging.

3. Place of delivery.

B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changes by the order, the Contractor shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

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

D. If the Subcontractor's proposal includes the cost of property made obsolete or excess by the changes, the Contractor shall have the right to prescribe the manner of the disposition of the property.

E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in the clause shall excuse the subcontractor from proceeding with the contract as changed.

A.4 CHANGES
ALTERNATE I (SERVICES, NO SUPPLIES)
ALTERNATE II (SERVICES WITH SUPPLIES)
ALTERNATE III (ARCHITECTURE & ENGINEERING)
ALTERNATE IV (TRANSPORTATION)
ALTERNATE V (RESEARCH & DEVELOPMENT)

A.5 CONFIDENTIALITY OF INFORMATION

A. To the extent that the work under the Order requires that the Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Seller shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by NWP in writing. The foregoing obligations, however, shall not apply to:

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

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

3. Information which the Seller can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from NWP or other companies.

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

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

C. The Seller agrees, if requested by NWP, to sign an agreement identical in all material respects to the provisions of this clause with each company supplying information to the Subcontractor under the 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 NWP it will execute a NWP approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by NWP, Subcontractor personnel shall also sign such an agreement.

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

A.6 CONVICT LABOR - FAR 52.222-3 (JUN 2003)
This clause shall flow down to all lower-tier subcontracts.

A.7 DELIVERY AND PAYMENT

A. The Seller shall work such hours, including night shifts and overtime operations, as may be necessary to meet the Order delivery date(s), or any duly authorized extensions thereof, at no increase in the price of the Order.

B. Unless otherwise provided in the Order, delivery shall not be made more than fifteen (15) days prior to the delivery dates specified herein, and NWP may return earlier deliveries at the Seller's expense. The Seller shall comply with the delivery schedule provided in the Order.

C. Unless otherwise specified in the Order, a separate invoice shall be issued upon each delivery of supplies or completion of services, and shall be payable by NWP upon receipt of supplies or completion of services and receipt by NWP of a correct invoice therefor. Credit and discount periods shall be computed from the date such invoice is so payable to the date NWP' check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of the invoice.

D. If the Order requires the submittal of vendor data, and if such vendor data or any part thereof is not delivered within the time specified by the Order, or is deficient upon delivery, NWP may, until such vendor data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments (not to exceed twenty percent (20%) of the Order price) to the Seller.

E. Notwithstanding anything herein, NWP shall be entitled at any and all times to set off against any amounts payable at any time by NWP hereunder any amount owing from the Seller to NWP under the Order.

A.8 DISPUTES, ARBITRITION, 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. Fees. 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 are not disposed of by agreement or arbitration 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 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 Subcontractor 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. WORK CONTINUATION

There shall be no interruption in the performance of the work, and Subcontractor 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 Subcontractor and its subtier subcontractors.

A.9 GRATUITIES

The Government and 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 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.10 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (Jan 1997) - FAR 52.223-3

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 contractor determines that any other material to be delivered under this contract is hazardous.

D. The apparently successful offeror agrees to submit, for each item as required prior to award, an 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 Contracting Officer and resubmit the data.

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

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

A.11 LAWS REGULATIONS, AND DOE DIRECTIVES

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.12 MATERIAL REQUIREMENTS

A. Definitions.
As used in this clause—
"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.
"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
"Remanufactured" means factory rebuilt to original specifications.
"Virgin material" means—
1. Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
2. Any undeveloped resource that is, or with new technology will become, a source of raw materials.

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

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

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

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

A.13 NEW MEXICO GROSS RECEIPTS TAX AND COMPENSATING TAX

By reason of NWP' 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 Seller 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 Seller 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. NWP may receive information regarding the subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of NWP, 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 NWP to represent its subcontractor.

D. The Seller 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.14 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT - DEAR 970.5227-5

This article does not apply, except for supplies offered the general public, if FAR 52.227-1, with Alternate 1 has been made applicable under Section B.

A.15 OBLIGATION OF FUNDS

Unless otherwise specifically provided for in the purchase order (PO) subcontract, NWP is not obligated to pay any amount in excess of the stated PO or subcontract price or, where partial funds are released incrementally, the obligated amount as released.

A.16 PASSAGE OF TITLE AND LIENS

The Seller 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, at the Seller's or a lower-tier subcontractor's facility by any person, firm, or corporation which has supplied equipment, materials, services, or data, the Seller agrees promptly, on demand of NWP and at the Seller's expense, to take any and all action necessary to cause any such lien to be released or discharged

therefrom. The Seller agrees to save NWP harmless from all liens, claims, or demands in connection with the work.

A.17 PATENT INDEMNITY - FAR 52.227-3

This article does not apply, except for supplies offered the general public, if FAR 52.227-1, with Alternate 1 has been made applicable under Section B.

A.18 PERMITS OR LICENSES

The subcontract/purchase order shall obtain all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

A.19 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.20 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 Seller agrees that in the release of information relating to the Order, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by The Department of Energy. For the purpose of this clause, "Information" includes, but is not limited to, news

releases, articles, manuscripts, brochures, advertisements, speeches, trade association meetings, symposia, etc. The Seller further agrees to include this provision in any lower-tier subcontract awarded as a result of the Subcontract.

A.21 RIGHTS TO PROPOSAL DATA

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

A.22 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 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 **do not include** non-conforming items resulting from inadequate design or production quality control. Such items shall be handled in accordance with NWP' nonconforming item procedures.

C. Materials and items furnished by the Seller to NWP 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.

D. If Suspect/counterfeit parts are furnished under this Agreement and are found on the WIPP site, such items shall be impounded by NWP. The Seller shall promptly replace such items with items acceptable to NWP and the Seller shall be liable for all costs relating to impoundment, removal, and replacement. NWP may turn such items over to the U. S. Office of the Inspector General for investigation and reserves the right to withhold payment for the suspect items pending the results of the investigation.

E. The rights of NWP in this clause are in addition to any other rights provided by law or under this agreement.

A.23 TERMINATION FOR CONVENIENCE OF CONTRACTOR

A. CONTRACTOR may upon written notice to SUBCONTRACTOR, without cause and without prejudice to any other right or remedy, elect to terminate all or any part of the Work. Such termination shall be effective in the manner specified in said notice. On receipt of such notice SUBCONTRACTOR shall, unless the notice directs otherwise, immediately discontinue Work and the placing of orders for equipment, materials, supplies and other items in connection with the performance of the terminated Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to CONTRACTOR, and shall thereafter do only such Work as may be necessary to preserve and protect Work already in progress and continue to complete the Work not terminated hereunder, and to protect all material, plant or equipment on the Facility Site or in transit thereto.

B. Should CONTRACTOR elect to terminate all or any part of the Work for convenience as provided herein, a complete and final settlement of any and all claims of SUBCONTRACTOR arising as a result of such termination shall be made as follows: CONTRACTOR shall pay to SUBCONTRACTOR, thirty (30) days after receipt of an invoice which meets the requirements of the Invoicing and Payment provisions of this subcontract, all amounts due and owing to SUBCONTRACTOR on or prior to the date of termination, including a payment for that Work satisfactorily completed but not yet invoiced by SUBCONTRACTOR prior to the termination date, all retainage held by CONTRACTOR at the date of termination, and all reasonable, actual termination costs incurred by SUBCONTRACTOR in terminating the Work (but excluding any and all costs and expenses incurred by SUBCONTRACTOR from and after the date of termination for those of its employees who are not directly performing required termination activities). In no event shall SUBCONTRACTOR be entitled lost profit on Work not performed. SUBCONTRACTOR shall not be paid for any Work performed or costs incurred that reasonably could have been avoided. All termination settlement proposals must be submitted to CONTRACTOR within three (3) months of the issuance of the termination notice. The Parties may agree on the amount to be paid because of the termination; however, the agreed amount shall not exceed the Subcontract price.

C. As a condition precedent to receiving any termination payment under this clause, SUBCONTRACTOR shall execute and deliver all such papers and take such steps concerning obligations and commitments of and to SUBCONTRACTOR in connection with the Work as CONTRACTOR may require for the purpose of fully vesting in CONTRACTOR the rights and benefits of SUBCONTRACTOR under such obligations and commitments, including but not limited to valid and final waiver of any and all actual or potential liens and/or claims.

A.24 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, 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.25 VARIATION IN QUANTITY

A variation in the quantity of any item called for by the Order will not be accepted unless the variation has been caused by conditions of loading, shipping or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in the Order. At the option of NWP, excess quantities will either be returned at the Seller's expenses or retained and paid for by NWP at the Order unit price.

A.26 WARRANTY

The Subcontractor agrees that goods or services furnished by the Subcontractor shall be covered by the most favorable commercial warranties the Subcontractor gives to any customer for the same or substantially similar goods or services, and the Subcontractor shall furnish copies of the same to NWP. The rights and remedies provided by such warranties are in addition to and do not limit any right afforded to NWP by any other clause of the Subcontract. Such warranties will be effective not withstanding prior inspection and or acceptance of the goods or services by NWP.

A.27 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007) - FAR 52.227-19

A. Notwithstanding any contrary provisions contained in the Subcontractor's standard commercial license or lease agreement, the Subcontractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this subcontract. The terms and provisions of this subcontract shall comply with Federal laws and the Federal Acquisition Regulation.

B. The commercial computer software delivered under this subcontract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (C) of this clause or as expressly stated otherwise in this contract.

C. The commercial computer software may be—

1. Used or copied for use with the computer(s) for which it was acquired, **including use at any Government installation to which the computer(s) may be transferred**;

2. Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

3. Reproduced for safekeeping (archives) or backup purposes;

4. Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this subcontract;

5. Disclosed to and reproduced for use by support service Subcontractors or their subcontractors, subject to the same restrictions set forth in this subcontract; and

6. Used or copied for use with a replacement computer.

(1) If the commercial computer software is otherwise available without disclosure restrictions, the Subcontractor licenses it to the Government without disclosure restrictions.

D. The Subcontractor shall affix a notice substantially as follows to any commercial computer software delivered under this subcontract:

Notice-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. ***DE-EM0001971****.*

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

A.28 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 NWP determines to be reasonably necessary for the purposes are taken.

C. Whenever 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, 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, 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 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 NWP for review and approval; the JHA must be approved prior to the start of any on-site performance. 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 NWP, the Buyer may, without prejudice to any other legal or contractual rights of 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 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 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 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.29 ENVIRONMENT, SAFETY, AND HEALTH - GOVERNMENT OWNED OR LEASED

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. 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's 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 subcontractor 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 and lower-tier 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 subcontractor. 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.

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 970.5204-3 also applies.

D. The System shall describe how the subcontractor 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 subcontractor will measure system effectiveness.

E. The subcontractor shall submit to NWP documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by NWP. Guidance on the preparation, content, review, and approval of the System will be provided by 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 Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract 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, NWP may issue an order stopping work in whole or in part. Any stop work order issued by NWP under this

clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that NWP issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of 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 the 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, NWP may require that the subcontractor submits a Safety Management System for NWP' 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 970.5232-3 also apply.

A.30 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 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 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 Seller, the Seller shall comply with all applicable laws and regulations as indicated below:

1. The Seller 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 Seller 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 Seller 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 Seller shall notify 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 Seller or its representatives, the nature and extent of the contamination. The Seller shall take no action with respect to such preexisting Hazardous Substance(s) without the written consent of NWP. The foregoing shall not apply (a) to a preexisting Hazardous Substance(s) identified in the Order or as otherwise formally identified by 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 Seller and its representatives shall cooperate with 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 Seller 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 NWP. In the event that the Seller 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 Seller 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 Seller 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 Seller 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 Seller shall assume and indemnify 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 Seller 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 Seller or its representatives as included under the Order or applicable law.

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

A.31 LAWS, REGULATIONS, AND DOE DIRECTIVES

A. In performing work under this subcontract, 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. 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 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 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 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.32 PERFORMANCE OF WORK AT DOE FAICLITIES AND SITES AND FACILITES OTHER THAN WIPP

When performing work under this subcontract at DOE facilities and sites other than the Waste Isolation Pilot Plant (WIPP), the subcontract shall comply with and follow the list of Applicable Directives set forth in DEAR 970.5204-2 of the General Provisions herein and any additional directives which have been established for the subcontractor at the DOE facility/site and that are applicable to the work being performed and to associated hazards at the particular facility or site.

A.33 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION - FAR 52.237-2

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Subcontractor’s failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to the Government as NWP directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the Subcontract price.

A.34 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 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 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.

30 days or more: 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:

30 days or less for Subcontractor Employees: 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.35 INSURANCE - WORK ON GOVERNMENT PREMISES - SELLER'S RESPONSIBILITY

A. As to the work to be done or performed by the Seller on premises owned or controlled by NWP, the Government, or the premises of other NWP subcontractors, the Seller 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 Seller or its lower-tier subcontractors, agents, or employees. The Seller shall indemnify and hold harmless 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 Seller or its lower-tier subcontractors, agents, or employees. Nothing in the foregoing shall be construed to require the Seller to indemnify and save harmless 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. 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.

E. The Seller 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 NWP and the Government against, and to save and hold harmless NWP and the Government from, any and all liability and expense with respect to claims against NWP or the Government which may result from the failure or alleged failure of the Seller or of any of its lower-tier subcontractors to comply therewith.

A.36 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 .

A.37 REPORTING OF ROYALTIES

If any royalty payments are directly involved in the Order or are reflected in the Order price, the Seller agrees to report in writing to NWP during the performance of the 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 the Order together with the names and addresses of the licenser 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 the 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 provisions of this article, appropriately modified as to parties, shall be included in all Orders that exceed $25,000 unless otherwise approved by the Contracting Officer.

A.38 CONTROL OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

Documents originated by the Subcontractor or furnished by the Government to the Subcontractor in connection with the Subcontract may contain unclassified controlled nuclear information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended.

The Subcontractor shall be responsible for protecting such information from unauthorized dissemination in accordance with 10 CFR 1017.

A.39 SUBCONTRACTORS LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

The subcontractor shall be liable to the Government for increased cost or interest for failure to comply with the cost accounting standards clauses as may be applicable to this subcontract.

A.40 NUCLEAR HAZARDS INDEMNITY REPRESENTATION

The obligation of NWP to indemnify the Seller or Subcontractor is subject only to that indemnification provided to NWP under DEAR 952.250-70.

SECTION B, GOVERNMENT FLOWDOWN CLAUSES INCORPORATED BY REFERENCE (Applicable at the dollar thresholds indicated in the Tables or as noted in the Instructions.

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.

This Subcontract or Purchase Order incorporates the* FAR/DEAR *Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, NWP will make their full text available.

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

CLAUSE	TITLE	INSTRUCTION
FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (APR 2004)	
FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	
FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	
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 (JULY 2008)	
FAR 52.237-3	Continuity of Services (JAN 1991)	
FAR 52.242-13	Bankruptcy (JUL 1995)	
FAR 52.242-15	Stop Work Order (AUG 1989)	
FAR 52.242-17	Government Delay of the Work (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 52.249-8	Default (Fixed-Price Supply and Service (Apr 1984)	
DEAR 952.204-71	Sensitive Foreign Nations Controls (APR 1994)	See Attachment 1. Copy will be provided upon request
DEAR 952.227-82	Rights to Proposal Data (APR 1984)	
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	

The following clause is applicable to <u>Subcontracts for Services that exceed $3,000:</u>

CLAUSE	TITLE	INSTRUCTION
FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	This clause applies to Subcontracts for services that exceed $3,000, except for Commercial services that are part of the purchase of a COTS (Commercial Off The Shelf) item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. 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. Therefore upon request, SUBCONTRACTOR must be able to provide, at every tier, satisfactory proof of compliance with this clause for its Lower Tier Subcontractors.

The following clauses are applicable to <u>Subcontracts that exceed $10,000:</u>

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 <u>Subcontracts that exceed $15,000:</u>

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 52.222-35	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."

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 52.215-2	Audit and Records Negotiation (OCT 2010)	
FAR 52.227-3	Patent Indemnity (APR 1984)	

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 $ 700,000:

CLAUSE	TITLE	INSTRUCTION
FAR 52.219-9	Small Business Subcontracting Plan (JAN 2011)	This clause does not apply to small business concerns
FAR 52.230-2	Cost Accounting Standards (OCT 2010)	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 clauses apply to certain <u>Subcontracts as noted:</u>

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
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
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
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
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
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 52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation (JUL 2005)	Clause applies to subcontracts that may involve the employment of laborers or mechanics.
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 52.222-43	Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts (SEP 2009)	Clause applies if Fixed-Price and subject to the Service Contract Act, is over $150,000, and it is multiple year or contains options to
FAR 52.222-44	Fair Labor Standards Act and Service Contract Act -- Price Adjustment (SEP 2009)	Clause applies if Fixed-Price and subject to the Service Contract Act, is over $150,000, and it is not multiple year or does not contain

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 52.223-7	Notice of Radioactive Materials (JAN 1997)	Clause applies to subcontracts for radioactive materials meeting the criteria in paragraph (a) of the clause.
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
FAR 52.227-1	Authorization and Consent (DEC 2007) with Alternate I (APR 1984)	This clause, with Alternate 1, shall apply to subcontracts, including any lower-tier subcontracts, for Research and Development work
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
FAR 52.227-16	Additional Data Requirements (JUN 1987)	This clause applies if the Subcontract Scope of Work meets the applicability requirements of DEAR 927-409(h)
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
FAR 52.247-63	Preference for U.S. Flag Air Carriers (JUNE 2003)	This clause applies to subcontracts that may involve international air transportation.
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	Applies to subcontracts, including lower-tier subcontracts, that involve work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

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
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 (JUNE 2010)	This clause applies to any subcontract that may involve foreign travel.
DEAR 952.5204-1	Counterintelligence (DEC 2000)	This clause applies to any subcontract where SUBCONTRACTOR employees are required to possess access authorizations (L or Q security clearances).

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 is 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 DOE site; or a high risk of danger to life, the environment, public health and safety, or national security.
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.
DEAR 970.5232-3	Accounts, Records, and Inspection (AUG 2009) Alternate I (DEC 2000)	Paragraphs (a) through (g) and (h) apply to this subcontract and any lower-tier subcontract where under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

SECTION C – CLAUSES APPLIES ONLY IF SPECIFICALLY REFERENCED OR SET FORTH IN THE SUBCONTRACT/PURCHASE ORDER

C.1 COST REDUCTIONS PROPOSALS

A. General. The Seller is encouraged to develop, prepare, and submit Cost Reduction Proposals (CRPs) to NWP through the Buyer for review by the DOE WIPP Contracting Officer. 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 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, 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 NWP by letter from the DOE Contracting Officer 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 (a) demonstrate a result in a reduction in the total agreed upon estimated cost for the annual period (October 1 through September 30), and (b) 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 NWP.

E. Audit of Actual Savings. The DOE or 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.2 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER (DEC 2007) - FAR 52.227.10

C.3 KEY PERSONNEL

When the Seller has proposed or identified specific personnel by name to accomplish tasks under the Order, those personnel are considered to be key personnel. The Seller agrees that these individuals will not be reassigned without the written agreement of the Buyer. Whenever, for any reason, one or more of these individuals are unavailable for assignment for work under the Subcontract, the Seller, with the approval of the Buyer, shall replace such individual with an individual substantially equal in abilities and/or qualifications.

C.4 LEGAL DEFENSE AND REIMBURSEMENT OF SUBCONTRACTOR PROTECTIVE FORCE OFFICERS AND OTHER EMPLOYEES

A. It is Government policy to have a Subcontractor defend any Subcontractor protective force officer or other employee if a claim or legal action is brought against the employee as a result of that employee's conduct while performing duties undertaken by the employee in

good faith for the purpose of accomplishing and fulfilling the official duties of his/her employment. The

prior approval of the DOE Contracting Officer shall be obtained before any such defense is undertaken.

B. The provisions of the Subcontract clause entitled “Insurance - Litigation and Claims” shall have the same application to claims and legal actions against employees under this clause as it has to those claims and legal actions which are brought directly against the Subcontractor.

C. When involved in any claim or legal action covered by this clause, an employee may, with the prior approval of NWP and the DOE Contracting Officer, be allowed time off with basic pay on scheduled workdays for consultation with counsel, trial attendance, and other matters as are reasonably incident to the claim or legal action.

C.5 WASTE REDUCTION PROGRAM - FAR 52.223-10

PART II Clauses Applicable to Labor Hours and Time and Material Subcontracts

SECTION D - In addition to the clauses in Sections A and B, and applicable clauses in Section C above, the following clauses are applicable to and/or take precedence over conflicting clauses in Sections A through C in Labor Hours and Time and Material Subcontracts.

D.1 ACCOUNTS, RECORDS, AND INSPECTION (AUG 2009) Alt. I (DEC 2000) DEAR 970.5232-3)

D.2 CEILING PRICE

The Seller shall notify the Buyer in writing whenever it has reason to believe that (1) the costs it expects to incur under the Order in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost specified, or (2) the total cost for the performance of the Subcontract will be either greater or substantially less than had been previously estimated. As part of the notification, the Seller shall provide the Buyer a revised estimate of the total cost to perform the work of the Order.

D.3 CHANGES - LABOR HOURS AND TIME AND MATERIALS (SEP 2000)- FAR 52.243-3

D.4 INSPECTION - LABOR HOURS AND TIME AND MATERIALS (MAY 2001) FAR 52.246-6

D.5 MATERIALS TO BE USED FOR TIME AND MATERIAL CONTRACTS

A. Only the cost of direct materials shall be allowable costs hereunder. The Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions. Except as otherwise provided in the schedule, direct materials as referenced by this document are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product. When material handling costs are included as part of material costs, material handling costs shall include only costs clearly excluded from the labor hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the Subcontractor's usual accounting procedures consistent with Part 31 of the Federal Acquisition Regulation (FAR) as supplemented or modified by Part 931 of the DEAR. The Seller shall not be paid any profit in connection with direct materials.

B. The costs of lower-tier subcontracts when authorized in advance by the Buyer, shall be reimbursable costs hereunder, provided such costs are consistent with paragraph C hereof. Reimbursable costs in connection with subcontracts shall be limited to the amounts actually required to be paid by the Seller to the lower-tier subcontractors and shall not include any costs in connection with the letting, administration, or supervision of such lower-tier subcontracts.

C. The Seller shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonification, and

when unable to take advantage of such benefits, it shall promptly notify the Buyer to that effect and the reason therefor. Credit shall be given the Buyer for the fore-mentioned allowance and the value of resulting scrap as has accrued to the benefit of the Seller, or would have so accrued except for the fault or neglect of the Seller. Such benefits lost through no fault or neglect of the Seller shall not be deducted from gross costs.

D.6 PAYMENTS AND ADVANCES

A. The Seller shall be paid monthly in accordance with the cash terms specified in the Order, upon submission to the Buyer of two (2) copies of Application for Payment and supporting documentation. The Seller shall provide supporting documents such as copies of timecards and statements as prescribed by NWP, which shall include detailed tabulations of billings for direct labor, overtime premium, if any, direct materials, and any other special direct charges authorized for payment under the provisions of the Order. Payments for hourly fractions shall be computed to the nearest quarter hour.

1. Payments otherwise due may be withheld by the Buyer as a result of defective work not remedied, or claims filed, or reasonable evidence indicating probable filing of claims, or failure of the Seller to make payments for material, labor or other indebtedness connected with the work, or a reasonable doubt that the Subcontract can be completed for the balance then unpaid. If the above causes are removed, on written notice the Buyer may rectify the same at the Seller's expense.

2. In making partial payments, the Buyer may at its discretion retain five percent (5%) of the value of the work completed as determined for the purpose of making partial payments until completion and acceptance of the service. Such amounts withheld shall be retained until the Seller has furnished an executed “Releases and Assignment of Credits" document and necessary audits have been completed.

B. Payments will be based on the total direct labor worked per day for Seller’s employees. No payments will be made for a lunch period.

C. The hourly rates applicable to the Order include wages, social security, taxes, workmen's compensation, all insurance, welfare funds, fringe benefits, Seller's overhead, profit, and other costs not specifically mentioned for Seller’s employees. These hourly rates shall be the only remuneration paid to the Seller for labor, materials, tools, equipment, and incidental services as may be necessary to perform all work required in conformance with the Order.

D. Unless authorized in writing, no payment shall be provided for time and expense incurred for transportation of Seller’s personnel and vehicles to or from NWP. If authorized in writing, the cost of necessary and reasonable travel incurred in the performance of the work under the Order as approved by the Buyer and in accordance with the provisions of the Order are allowable.

E. Overtime under the Order will be worked only if authorized in advance by the Buyer.

F. At any time or times prior to final payment under the Order, the Buyer, the DOE, or their duly authorized representatives may cause to be made such audit of the invoices, vouchers, financial records, or statements of costs relating to the labor hours and other cost changes in the performance of the Order as may be deemed proper by the Buyer or the DOE. Each payment therefor made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of costs which are found by the Buyer or the DOE not to have been properly payable, and shall also be subject to reduction

for overpayment or increases for underpayment on preceding invoices or vouchers. Upon receipt of the voucher or invoice designated by the Seller as the "completion voucher" or "completion invoice" and statement of cost which shall be submitted by the Seller as promptly a may be practicable following completion of work under the Order, but in no event later than sixty (60) days, and following compliance by the Seller with all the provisions of the Order (including without limitation, the provisions relating to patents and release of claims), and subject to any audit, as fore described and as deemed necessary, the Buyer shall pay any balance due and owed to the Seller in accordance with the specified cash terms.

D.7 RELEASES AND ASSIGNMENT OF CREDITS

A. Releases. Upon completion and acceptance of all work required hereunder and compliance with all Order provisions, the Seller and each assignee under an assignment entered into under the Order and in effect at the time of final payment under the Order, shall execute and deliver at the time of and as a condition precedent to final payment under the Order, NWP' Subcontractor Closeout, discharging the Buyer and the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the Order.

B. Assignment of Credits. The Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Seller or any assignee which arises out of the performance of the Order and on account of which the Seller has received reimbursement under the Order shall be paid by the Seller to the Buyer.