AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT	1. CONTRACT ID CODE	PAGES OF PAGES 1 I

2. AMENDMENT/MODIFICATION	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
M198	SEE BLOCK 16C		

6. ISSUED BY CODE I

U. S. Department of Energy
Oak Ridge Operations Office, AD-423
P. O. Box 2001
Oak Ridge, TN 37831

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

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

Bechtel Jacobs Company, LLC
P.O. Box 4699
Oak Ridge, Tennessee 37831-7294

_CODE I FACILITY CODE

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

(X) 10A. MODIFICATION OF CONTRACT/ORDER
DE-AC05-98OR22700

10B. DATED *(SEE ITEM 13)*
December 18, 1997

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION

_____ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers ___ is extended. __is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

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

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation data, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: P.L. 95-91 and Mutual Agreement
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor__is not_X__ is required to sign this document and return _2__ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/ MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*
See Page 2.

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

15A. NAME AND TITLE OF SIGNER *(Type or print)*	16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*
Paul H. Divjak President and General Manager	Robert O. Collins Contracting Officer

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)	9/18/2008	BY *(Signature of Contracting Officer)*	9/19/08

DUPLICATE ORIGINAL

The purpose of this modification is to implement the terms of the complete settlement of all matters that are known or should have been known by the Contractor or the Government (the "Parties"), as of the effective date of this modification. Specifically this modification: (1) establishes the fee earned for work performed October 1, 2003 through September 30, 2007; (2) converts the incentive fee completion contract to a cost reimbursement fixed fee term contract for the period October 1, 2007 through December 31, 2011; and (3) resolves and settles all requests for equitable adjustment, requests for exclusion, notification of changes, and other issues that are known or should have been known on the effective date of this modification.

1. RELEASE FOR ITEMS RESOLVED IN CONSIDERATION FOR AGREED INCENTIVE FEE FOR THE PERIOD OCTOBER 1, 2003 THROUGH SEPTEMBER 30, 2007 (CLAUSE B.2) and CONTRACT CONVERSION FOR THE PERIOD OCTOBER 1, 2007 THROUGH DECEMBER 31, 2011 (CLAUSE B.4)

   (a) In consideration for this Modification M198 to Contract DE-AC05-98OR22700 agreed to by the Parties, Contractor agrees to release, waive, and settle, without further liability to the Government, the Requests for Equitable Adjustment (REA) and Requests for Exclusion (RE) of Costs (submitted and/or planned), Notification of Changes, and Other Issues covered in paragraph (e). The Contractor hereby releases the Government from liability for any equitable adjustment in the Contract Price, Schedule, Target Cost, Target Fee, Target Schedule, or actual cost adjustments pursuant to FAR 52.216-10 attributable to such facts or circumstances, including impact costs arising out of delays and disruption, giving rise to the matters covered in paragraph (e).

   (b) The Contractor's execution of this modification serves as a full release for all matters covered in paragraph (e) below, including those based upon the availability of appropriations based upon DOE's normal practices in fiscal administration and execution of appropriated budgets.

   (c) The Parties hereby agree that this modification fully resolves all the matters covered in paragraph (e) below as of the effective date of this modification. The changes effected by this modification shall not give rise to any requests for equitable adjustment, claims, demands, appeals, causes of action, setoffs or requests for payment of any kind arising under or relating to this contract by the Contractor.

   (d) The Parties agree that the provisions reflected in the contract, as modified herein, take into account all modified work requirements contained in this modification and that the Contractor is not entitled to any different or additional payments for work under the contract as modified. This statement does not affect any different or additional payments that may become due under the contract to either the Contractor or DOE following the effective date of this modification as a result of any subsequent changes to the contract.

(e) The Contractor agrees to release, waive, and settle, without any further liability to the Government or its contractors: (a) all claims, demands, causes of action, appeals, and REAs and REs submitted by the Contractor as of the effective date of this modification; (b) all claims, demands, causes of action, appeals, and REAs and REs that have been identified by the Contractor but not formally submitted to the Government as of the effective date of this modification: and (c) all claims, demands, causes of action, appeals, and REAs and REs for issues arising under or related to this contract that the Contractor knew or should have known on the effective date of this modification, including, but not limited to, the following:

Requests for Equitable Adjustment and Requests for Exclusion of Costs:
REA for Shipping Lithium K-25, submitted June 24, 2004
REA for Public Tour Program, submitted July 30, 2004
REA for FY04 Funding $20.9, submitted November 23, 2004
REA for FY04 Funding $0.9, submitted December 15, 2004
REA for Response Boundary Y-12, submitted March 16, 2005
REA for Corehole 8 Acceleration, submitted April 6, 2005
REA for DUF6 Receiver Site Delay, submitted April 6, 2005
REA for CROET, submitted April 7, 2005
REA for K-1417/K-1420, submitted July 1, 2005
REA for FY05 Funding $10.5, submitted July 1, 2005
REA for NHPA Artifact Collection, submitted July 1, 2005
REA for FY05 Funding $19.2, submitted August 11, 2005
REA for MV ROD ESD, submitted August 11, 2005
REA for Toxco, submitted November 16, 2005
REA for Dispose 1417 Containers, submitted November 16, 2005
REA for Turnover of 1501-H/L, submitted November 16, 2005
REA for BNFL RmAR, submitted November 16, 2005
RE for Severe Weather Damage, submitted January 20, 2006
REA for Leased Facilities Emgy, submitted January 23, 2006
REA for ETTP End State, submitted April 3, 2006
REA for K-25/K-27 ORR, submitted June 30, 2006
REA for Extended Base Ops (True-up), submitted June 30, 2006, Rev 1 dated April 11, 2008
REA for TSCAI Extension, submitted July 13, 2006
REA for K-31/K-33 S&M, submitted July 25, 2006
REA for K-29 D&D Contamination, submitted July 26, 2006
REA for K-770 Scrap Yard Casks, submitted August 10, 2006
REA TRU Waste Handling, submitted August 25, 2006
REA for Security (Non-Manual), submitted September 29, 2006, Rev 1 dated October 25, 2006
REA for K-25/K27 Tc99 (6 to 14 cells), submitted October 16, 2006
REA for Waste Characterization, submitted October 17, 2006
REA for CROET Adjustment, submitted November 13, 2006
REA for DOE Order 226.1 Oversight, submitted December 4, 2006

RE for MV Unusually Severe Weather, submitted December 14, 2006
REA for Triennial Report, submitted December 8, 2006
REA for K-25/K-27 HRE, submitted December 20, 2006
REA for FY04 Funding Melton Valley, submitted December 22, 2006
REA for Trench 13 Pyrophoric Event, submitted February 9, 2007
REA for National Incident MS, submitted February 16, 2007
RE for MSRE Fuel Salt Removal, submitted April 9, 2007
RE for Utah Waste - Reg Change, submitted April 9, 2007
REA for Security Clearance (Manual), submitted April 10, 2007
REA for Admin Control (STD 1186), submitted May 2, 2007
REA for FY07 Funding = $52.9 Rev.1, submitted May 14, 2007
REA for K-25 Barge Facility Transfer, submitted May 14, 2007
RE for K-25 Fissile Characterization, submitted May 21, 2007
RE for K-25 Building Integrity, Original, Rev 1, and Rev. 2, submitted February 13, 2008
RE for Front Lawn Transfer, July 2, 2007
RE for Worker Safety & Health (10CFR851), submitted October 3, 2007
REA for Comp Emgy Mgmt (O151.1C), submitted November 13, 2007
REA for Occurrence Reporting, submitted November 13, 2007
REA for Operating Experience (210.2), submitted December 10, 2007
REA for Cyber Security (Order 205.1), submitted November 14, 2007
REA for OMB Circular A-123, submitted November 15, 2007
REA for Transition of TRU Scope to FWENC, submitted December 12, 2007
REA for K-31 Decontamination Study, submitted January 9, 2008
REA for Extended EMWMF Contract, submitted January 11, 2008
REA for 2007 Rebaseline/Funding Reductions, submitted March 5, 2008
REA for Corehole 8 Direct ship, submitted March 7, 2008
REA for TRU Waste (Sort & Segment), submitted March 28, 2008

Planned Requests for Equitable Adjustment:

Facility Safety (Order 420.1B) as detailed in BJC letter Notification of Changes, Implementation of DOE 0 420.1B, Facility Safety, dated December 22, 2005.

Funding Volatility (Quarterly vs. Annual), Request for Equitable Adjustment SC11, listed in BJC proposal dated November 20, 2007.

K-25 Ops Floor Access, Request for Equitable Adjustment SC12, listed in BJC proposal dated November 20, 2007.

Security Clearance Adjustment (NM/Man), Request for Equitable Adjustment SC14, listed in BJC proposal dated November 20, 2007.

BNFL Waste @ ORNL, Request for Equitable Adjustment SC15, listed in BJC proposal dated November 20, 2007.

K-25 Fissile Characterization (Adjustment), Request for Equitable Adjustment SC16, listed in BJC proposal dated November 20, 2007.

Delete MSRE Fuel Salt Removal, Request for Equitable Adjustment SC17, listed in BJC proposal dated November 20, 2007.

Haul Road (Deferred Value), Request for Equitable Adjustment SC18, listed in BJC proposal dated November 20, 2007.

K-1070B Burial Ground (Shut-down rework), Request for Equitable Adjustment SC20, listed in BJC proposal dated November 20, 2007.

FY08 Continuing Resolution, Request for Equitable Adjustment SC6, listed in BJC proposal dated November 20, 2007.

Reindustrialization Support at ORNL, detailed in BJC letter dated February 10, 2006

TVA Rate Increase, 2007 Rebaseline

CROET Adjustment, 2007 Rebaseline

K-1401 Slab Removal

Cyber Security, Rev1

Coy Property Debris Removal

Power Carts at K-25, Notification of Changes, Direction to discontinue use of portable power carts at Building K-25, BJC letter dated February 13, 2008

Substance Abuse Program Expansion, Prospective Revision to Workplace Substance Abuse Regulations, Contracting Officer Letter of Direction dated December 28, 2007

Rimmer Property DWI 1630, Notification of Potential Change, Remediation on Rimmer Property adjacent to David Witherspoon 1630 Property, letter from BJC dated December 17, 2007.

TSCAI RCRA Closure

MSRE Fuel Salt Removal Acceleration

Programmatic Fuel Cost Increases

K-25 Miller's Fluorinated Oil Cold Trap, Notification of a Pre-Existing Condition, Miller's Fluorinated Oil in K-25, K-312 Area Cold Trap Rooms Piping, letter from BJC dated March 28, 2008

Chromium Source, Hexavalent Chromium Releases into Mitchell Branch at the East Tennessee Technology Park, Oak Ridge, Tennessee, letter from BJC dated December 20, 2007

K-25 Water in Gas Equipment, Notification of a Pre-Existing Condition, Water in K-25 Building Process Equipment, letter from BJC dated March 17, 2008

BOS Labs Pit Waste to Utah

Public Tour Program Rev 1

<u>Notification of Changes pursuant to FAR 52.243-7:</u>

Approval of Safety Basis Documents, submitted January 20, 2004

Approval of Safety Basis Documents, submitted February 26, 2004

DOE Directed Stand-Down on Controlled Removable Electronic Operations, submitted August 31, 2004

Implementation of DOE N 206.2 Personal Identity Verification, submitted October 18, 2005

MOA-CROET, City of Oak Ridge, dated October 31, 2005

Implementation of DOE O 450.1, Change 2, Environmental Protection Program, submitted March 31, 2006

Contact Handled TRU Waste Drums, submitted June 8, 2006

Buildings K-7918. K-1005, K-1008F. K-792, submitted June 15. 2006
RA for Y-12 Minded Material. submitted September 22, 2006
DOE O 420, Chapter XVI Fire Protection, submitted November 7, 2006
Potential Direction to Add Three Additional DOE Reviews to the K-25 D&D Project submitted May 4, 2007
Direction to Implement Standard 5506-2007 for Transuranic Waste, submitted June 11, 2007
Implementation of Process for Uranium Deposit Thresholds, submitted June 29, 2007
Direction to Measure and Sample Sludge in Storage Tanks in Support of Transuranic Sludge Processing. submitted August 13, 2007
Funding Guidance for FY 2006, PBS Control Point, submitted May 1, 2006
Verbal Direction on September 19 and 22, 2006; Stop Work on PBS 30, submitted September 25. 2006
Direction to Initiate Remediation Activities, submitted February 29. 2008

Other Issues:
REA for Indian Owned, Scientific Sales. submitted January 11. 2008
Filter Test Facility K-1024 Fee, submitted September 7, 2005
Facilities and Materials Reuse Program deletion, submitted October 18, 2005
Delete Demolition of Rubb Tent 7842-B, submitted April 28, 2005
Provisional Fee Determination Adjustment for Safety. dated February 16. 2005
Provisional Fee Determination Adjustment for Safety. dated June 1, 2006
MSRE Conditional Payment of Fee, dated April 20, 2007

(f) This release shall not affect Contractor's right or ability to assert any fact or circumstance relating to any item in the above paragraph (e) list in response and /or as a defense in connection with any penalty. assessment, conditional payment of fee reduction, or any other contractual or extra-contractual action asserted by the Government against Contractor.

(g) The Department of Energy agrees to waive, without any further liability to the Contractor, its subcontractor(s), surety(ies), guarantor(s), successor(s) or assign(s), all claims, demands, appeals, causes of action, requests for adjustment, or other liabilities or requests for payment of any kind (hereinafter "claims") arising under or relating to this contract, of which the Department knew or should have known as of the effective date of this modification. The Contracting Officer's execution of this modification serves as a full release of liability for all such claims. This release does not include any claim of set off by the Government or any claims under the jurisdiction of another agency of the U.S. Government.

2. Requests for Equitable Adjustment, including future REAs, are subject to incurred cost audits. Any subsequent adjustment to costs incurred is subject to negotiation upon completion of the audit.

3. As a result of the conversion to a cost plus fixed fee contract, and pursuant to the terms of modification M198. the contract is restated in its entirety as attached hereto. The fixed fee

structure, as set forth in Section B.4 of the revised contract, covers the period of October 1, 2007 through December 31, 2011.

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SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 TYPE OF CONTRACT - ITEMS BEING ACQUIRED

This is a Cost-Plus-Fixed-Fee (CPFF) contract. The Contractor shall be responsible for planning, managing, integrating, and executing the work as described in Section C, Statement of Work (SOW). The Contractor shall furnish all personnel, facilities, equipment, supplies, and services (except as furnished by the DOE) and otherwise do all the things necessary for performing in a safe, efficient, and effective manner.

B.2 FEE FOR WORK COMPLETED BETWEEN OCTOBER 1, 2003 AND SEPTEMBER 30, 2007

In consideration for the work completed between October 1, 2003 and September 30, 2007, it is agreed that the Contractor has earned fee in the amount of $39,909,404. This includes: (1) final fee for the Legacy Waste and Melton Valley Milestones in the amount of $16,585,850; and (2) final fee for work completed through September 30, 2007 for the ETTP Closure milestone and Balance of Program milestone work in the amount of $23,323,554.

The Contractor is authorized to drawdown fee in the amount of $6,899,028 which is the agreed fee amount of $39,909,404 less provisional fee payments to date of $33,010,376 and these fee payments are final fee.

B.3 OBLIGATION OF FUNDS (CPFF) (MAY 1997)

Pursuant to the clause entitled "Obligation of Funds," total funds in the amount of $TBD are obligated herewith and made available for payment of allowable costs and fixed fee to be incurred from the effective date of this contract through the period estimated to end December 31, 2011.

B.4 SCHEDULE FOR FIXED FEE FOR PERFORMANCE BETWEEN OCTOBER 1, 2007 AND DECEMBER 31, 2011

(a) The total contract cost and fee is $1,481,101,225. This total includes costs for the items excluded from Estimated Cost discussed in Clause B.6. For work to be performed from October 1, 2007 to December 31, 2011, the Contractor will be paid a fixed fee based on Estimated Costs (fee bearing) and amounts as follows:

Fiscal Year	2008	2009	2010	2011	1st Qtr, 2012	Total
Estimated Cost	$305,023,000	$330,568,000	$324,027,000	$247,443,000	$45,509,000	$1,252,570,000
Fixed Fee	$12,963,477	$14,049,140	$13,771,147	$10,516,327	$1,934,132	$53,234,225

Schedule of Fixed Fee and Estimated Cost (fee bearing)

The fixed fee for FY 2008 and each subsequent fiscal year will be paid monthly at the rate of one-twelfth (1/12) of the annual amount per month. Such payment amounts are to be drawn down by the Contractor from the Contractor's special financial institution account in monthly installments on the last day of each month.

(b) Administration of Pension and Benefit Services at Portsmouth and Paducah Sites Funding and Costs

The Contractor will be reimbursed for costs and a fixed fee on a monthly basis by the four Prime Contractors via a chargeback system. Should the costs and fee not be reimbursed on a timely basis by the four Prime Contractors, the Contractor is authorized to cover costs and fee by the letter of credit in accordance with Appendix D attached hereto.

Direct funding and reimbursement of costs by DOE is not anticipated because the Contractor will recover costs and fee directly from the new contractors beginning in the second half of Fiscal Year 2005; however, if direct funding is provided and costs are incurred, the funding and costs will be excluded from the estimated cost and funding profile in Sections B and H of the Contract.

All costs will be accounted for separately, shall be reasonable, and will be subject to audit.

The total estimated cost and fixed fee are:

Benefits administration	$8,772,226
Pension administration (to be recovered through the pension fund)	$2,100,000
Fixed fee for benefit and pension administration	$ 600,000
Total estimated cost and fee	$11,472,226

B.5 SCHEDULE INCENTIVES

The schedule incentive is comprised of three elements. Separate incentives are established for Building K-25 East & West Wing Demolition; Building K-25 North Wing Demolition; and Building K-27 Pre-demolition.

B.5.1 Building K-25 East & West Wing Demolition

The baseline estimate for completion of the Building K-25 East and West Wing demolition is December 28, 2010. If the Contractor completes the demolition by December 11, 2010, an incentive fee of $3,500,000 will be earned. This amount includes $1 million for an employee productivity incentive pool to be distributed in accordance with a plan to be developed by the Contractor and approved by the Contracting Officer. This fee will be in addition to the fixed fee amounts established in Section B.4. There will be no adjustment to the fixed fee for completion of this work between December 12, 2010 and December 31, 2011.

Completion of the demolition work for the purpose of earning the incentive by December 11, 2010, is defined as the Building K-25 East and West Wings structure are on the ground, i.e. there is no structure standing and only construction rubble to be used as backfill remains and steel, process piping, and process equipment has been disposed. Disposition excludes anomalous waste streams. Mined nuclear materials may reside in storage. This incentive does not require completion of the following activities: site restoration, backfill, demobilization, demolition of K-25 North Wing and K-25 North East Bridge, segmentation and mining of high risk equipment, and preparation of the Phased Construction Completion Report.

If the Contractor does not complete the statement of work in section C.3.1.4, as it applies to the East and West Wings, by December 31, 2011, the fixed fee will be reduced by $1,000,000.

B.5.2 Building K-25 North End Demolition

The baseline estimate for demolition of the Building K-25 North End is September 30, 2011. If the Contractor completes the demolition prior to August 31, 2011, an incentive fee of $1,500,000 will be earned. This fee will be in addition to the fixed fee amount established in Section B.4. There will be no adjustment to the fixed fee for completion of this work between September 1, 2011 and December 31, 2011.

Completion of the demolition work for the purpose of earning this incentive is defined as the Building K-25 North End structure and North East Bridge are on the ground, i.e. there is no structure standing and only construction rubble to be used as backfill remains and steel, process piping and process equipment is

disposed. Disposition excludes anomalous waste streams. This incentive does not require completion of the following activities: site restoration, backfill, demobilization, segmentation and mining of high risk equipment, and preparation of the Phased Construction Completion Report. The completion date of September 30, 2011, is dependent on DOE providing the Contractor a written Notice to Proceed with demolition by March 31, 2009.

If the Contractor does not receive a Notice to Proceed with the demolition by March 31, 2009, the Building K-25 North End Structure incentive shall have no further force and effect and the parties agree to negotiate an alternative option.

If the Contractor does not complete the demolition of the K-25 North End as specified in Section C.3.1.4, as it applies to the K-25 North End, by December 31, 2011, the fixed fee will be reduced by $500,000.

B.5.3 Building K-27 Pre-demolition Completion

The baseline estimate for placing the Building K-27 in a safe condition ready for demolition is September 20, 2011. If the Contractor completes the defined activities prior to August 14, 2011, an incentive fee of $3,000,000 will be earned. This amount includes $0.5 million for an employee productivity incentive pool to be distributed in accordance with a plan to be developed by the Contractor and approved by the Contracting Officer. This fee will be in addition to the fixed fee amount established in Section B.4. There will be no adjustment to the fixed fee for completion of this work between August 15, 2011 and December 31, 2011.

Completion of this work for the purpose of earning this incentive is defined as: all High Risk Equipment components with greater than 350 grams of U235 removed from the facility, duct cutting is complete as necessary for Non-Destructive Assay and waste characterization and foaming; process piping greater than 3" in diameter has been vented, purged, and drained; foaming is complete to the extent necessary for the removal of High Risk components greater than 350 grams of U235; Non-Destructive Assay characterization of process and auxiliary equipment is complete; intrusive sampling of process and non-process gas equipment and building structure for waste management criticality incredible determination is established; the fire protection (lube oil drained, miscellaneous loose combustibles not attached to the building removed) and Radiation Criticality Accident Alarm Systems are deactivated; asbestos (not including external transite) removal; Tc99 cylinder removal; sampling and characterization; and hazardous waste/universal waste removal. Completion does not include external transite removal, waste profile establishment, removal of Low Risk Equipment to be dispositioned at the Nevada Test Site, segmentation and mining, and submission of a Phased Construction Completion Report.

If the Contractor does not complete the statement of work in section C.3.1.4, subparagraph 2, by December 31, 2011, the fixed fee will be reduced by $1,000,000.

B.6 ITEMS EXCLUDED FROM ESTIMATED COST

The following items are excluded from the Estimated Cost for fee purposes:

- Both administrative and claims costs associated with Legacy Workers Compensation and Legacy Litigation costs
- Costs of Post Retirement Medical & Long Term Disability.
- Severance Costs
- Pension Costs
- Reservation Management Costs
- DOE Safeguards and Security (Wackenhut, Other DOE Primes)

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C.1 OAK RIDGE (OR) ENVIRONMENTAL MANAGEMENT PROJECTS

C.1.1 Contract Purpose and Overview

This is a Cost-Plus-Fixed Fee (CPFF) contract that includes three schedule performance incentives. The CPFF contract is effective on October 1, 2007. Portions of the Statement of Work completed prior to the modification of this contract from a Cost Plus Incentive Fee contract to a CPFF contract are retained in the Statement of Work for historical information. The contract reflects the application of performance-based contracting approaches and techniques that emphasize results/outcomes and minimize "how to" performance descriptions. The Contractor has the responsibility for performance under the contract, including determining the specific methods for accomplishing the work. Purposes of the contract include safely meeting the end-state objectives, compliance with regulatory requirements, preparation of plans and installation of infrastructure necessary for long term monitoring and surveillance, support of post Fiscal Year (FY) 2011 Balance of Program (BOP) and post-2011 East Tennessee Technology Park long-term planning, and transfer of facilities to the Community Reuse Organization of East Tennessee (CROET) for industrial use and/or to the principal line management organization in the case of waste generation.

C.1.2 End-State

The following End-States shall be completed in accordance with this Statement of Work and the terms of the Contract:

- Melton Valley (MV) Site Completion specified in Section C.2 shall be completed by September 30, 2006. Contractor submitted declaration of completion on September 30, 2006 and DOE accepted the declaration on November 13, 2006.
- BOP projects specified in Section C.4 shall be completed and/or executed through December 31, 2011
- All Legacy Low-Level Waste (LLW) and Legacy Mixed Low Level Waste (MLLW) shall be dispositioned by September 30, 2005. Contractor submitted declaration of completion on September 30, 2005, and DOE accepted the declaration on October 24, 2005. All other Oak Ridge Reservation Legacy Waste specified in Section C.5 shall be dispositioned by December 31, 2011.

The Contractor shall prepare the necessary plans and install the infrastructure necessary to support Long-Term Surveillance and Maintenance (LTSM) of the End State remedies. This includes any required Institutional Controls. Any LTSM required prior to contract completion shall be provided by the Contractor. The Contractor shall assure smooth transition to the next Contractor(s) (or other entity) as specified by DOE. For other requirements refer to section C.6.

All documentation required to demonstrate accomplishment of the three End States described above shall be prepared by the Contractor and accepted by DOE as a condition for determining completion of the work and for determining each End State completion date. A comprehensive exit plan/strategy shall be prepared by the Contractor and approved by DOE to define the process, plans and other deliverables necessary to meet this requirement, including interim completion notices. This plan shall be completed within six months of the award of this contract. The exit plan/strategy shall also define specific end states for each facility or activity which comprise each of the three end states. (This comprehensive exit strategy has been submitted by the Contractor and approved by DOE.)

C.1.3 Contractor Performance

The Contractor shall furnish all personnel, facilities, equipment, material, services and supplies and otherwise do all activities necessary to accomplish work in a safe, integrated, effective, and efficient manner.
The Contractor shall be responsible for all planning, integration, management, and execution of programs, projects, operations and other activities as described in this SOW. This will include the utilization of information, material, funds and other property of the DOE; the collection of revenues; and the acquisition, sale, or other disposal of Government property for the DOE. Any work that is complete and accepted by DOE, but requires ongoing surveillance, maintenance, and/or monitoring shall be the responsibility of the Contractor through completion of the contract or until transferred to another program, which ever occurs first. The Contractor shall implement and maintain the Oak Ridge Environmental Management Project (OREMP) baseline as required in the clause entitled "Project Control Systems and Reporting Requirements" in Section H. Also, the Contractor shall maintain the ORO EM Life Cycle Baseline (LCB).

The Contractor shall be responsible for providing all oversight and project management functions to enable the safe completion of the work. In addition, the Contractor is responsible for the operations, environmental protection, safety, health, and quality assurance within its own organization and its subcontractors.

C.1.4 Agency Agreements

The Contractor must comply with the Federal Facility Agreement (FFA), implemented January 1, 1992, and its associated documents and milestones, and the Oak Ridge Accelerated Cleanup Plan Agreement dated June 18, 2002. The current FFA milestones are documented in Appendix E of the FFA. The FFA milestones can be modified annually with collective agreement of DOE and the regulators. Consistent with the scope in C.1.3, the Contractor must also comply with all applicable environmental permits and compliance documents.

C.2 MELTON VALLEY CLOSURE

The work completed by the Contractor is documented in the Contractor's Declaration of Completion letter dated September 30, 2006, and DOE's acceptance letter dated November 13, 2006. Work required to achieve the Melton Valley End State includes, but is not limited to, the following:

(1) Perform the remedy specified in the Record of Decision for Interim Action for the Melton Valley Watershed at the Oak Ridge National Laboratory, Oak Ridge, Tennessee [DOE/OR/01-1826&D3: dated September 2000]; but excluding the Shielded Transfer Tanks (STTs) referred to in the revised Section C.2.1.7 below.

(2) Comply with the Dispute Resolution Agreement with the State of Tennessee under the Federal Facility Compliance Act (FFCA) Site Treatment Plan (STP) for the ORR, signed September 2000 for the containerized TRU waste in the 22-Trench Area in SWSA 5 north;

(3) Complete the tank remediation program at ORNL in accordance with the Record of Decision for Interim Actions in Bethel Valley (BV) dated May 2002;

(4) Ship repackaged SNF to an approved off-site facility per the Programmatic Environmental Impact Statement ROD (60 FR 28680);

(5) Disposition all non-TRU waste currently staged in MV;

(6) Demobilize and transition the site as directed by DOE; and

(7) Complete and obtain DOE and Regulatory approval of project completion reports, in accordance with the Comprehensive Exit Plan/Strategy. The Contractor shall obtain DOE and regulatory approval of the Melton Valley RAR by September 30, 2007.

The following units associated with MSRE, though part of the MV ROD selected remedy, are currently excluded from this contract. The Contractor shall perform all necessary surveillance and maintenance of these facilities throughout the term of this contract.

- 8A.1C Molten Salt Reactor Experiment (MSRE) Diesel Generator House 7555
- 8A.1F MSRE Filter Pit (Off-Gas Filter House)(7511)
- 8.C MSRE Stack (7512)
- 8.D MSRE Supply Air Filter House Building (7514)
- 8.E MSRE Tanks VT-1 (condensation tank)
- 8.F MSRE Tanks VT-2 (expansion tank)

C.2.1 General Scope Descriptions

The following are descriptions of work anticipated to achieve MV closure, but are not all-inclusive of the requirements in the aforementioned regulatory documents.

C.2.1.1 Hydrologic Isolation

The Contractor shall install multi-layer caps in SWSAs 4, 5, and 6 and in portions of the Seepage Pits and Trenches Area. Designs will meet RCRA closure requirements and will be approved by the regulators in the Remedial Design Report (RDR). Upgradient diversion trenches shall be installed in SWSAs 4 and 6 and a portion of the Seepage Pits and Trenches Area to intercept upgradient storm flow and shallow groundwater before they flow through waste areas. Surface water shall be routed around caps using perimeter ditches. Collection drains shall be installed downgradient of capped areas in SWSA 4, SWSA 5 South, and in the Seepage Pits and Trenches Area. The collected groundwater shall be treated to meet discharge limits.

C.2.1.2 Buried TRU Waste Retrieval

The Contractor shall remove buried TRU waste from the 22-Trench Area in SWSA 5 North. The removed waste shall be placed in overpacks (supplied by DOE) and boxes; and staged in appropriate areas; and transported to the TRU Waste Processing Center when directed by DOE. The Contractor will stabilize in place and monitor to ensure safe keeping of the pyrophoric materials in Trench 13. Soil exceeding remediation levels in the MV ROD and debris waste associated with the excavation shall be disposed at either a permitted commercial disposal facility or government disposal facility.

Under Section C.4, Balance of Program, the Contractor shall identify a feasible disposition for the "no-path" pyrophoric materials in Trench 13 and make final disposition in a manner satisfactory to the DOE and State of Tennessee by December 31, 2011.

C.2.1.3 Impoundments

The Contractor shall excavate and dispose sediments and soils from the HRE Pond and the HFIR Collection Basins, at either a permitted commercial disposal facility or government disposal facility. The cryogenic barrier on the previously filled and capped HRE Pond will be

maintained until pond sediment and contaminated soil in the area are removed.

C.2.1.4 Floodplain Soils

The Contractor shall remove floodplain soil radiologically contaminated at levels greater than 2500 μR/hour. Removed soil shall be disposed at either a permitted commercial disposal facility or government disposal facility, or used as contour fill under one of the various multilayer caps. Any wetland areas that are disturbed as a result of soil or sediment removal shall be restored or replaced within the White Oak Creek watershed through mitigation strategies developed in cooperation with the regulators' wetlands programs.

C.2.1.5 Contaminated Surface Soils

The Contractor shall remove contaminated surface soils above remediation levels throughout Melton Valley in accordance with "Remediation Levels" section 2.11.7.3 in the MV ROD. The excavated contaminated surface soil shall be disposed at an approved facility, or used as contour fill under one of the various multilayer caps.

C.2.1.6 Inactive Pipelines

The Contractor shall remove, stabilize, or isolate inactive waste pipelines in accordance with "Inactive Pipelines" section 2.11.1.8 in the MV ROD.

C.2.1.7 Facility Decontamination and Demolition

The Contractor shall demolish to slab inactive buildings and other aboveground structures, identified in the MV ROD Appendix A. Subsurface structures shall be stabilized. Stabilization will be preceded by removal or fixation of transferable contamination. Demolition waste shall be disposed at either a permitted commercial disposal facility or government disposal facility.

Under Section C.4 Balance of Program, the Contractor shall vent, stabilize and dispose of Shielded Transfer Tanks (contents and tanks) RD-C-48, 47, -43 and 7L42-208 by December 31, 2011. The Contractor shall vent, stabilize and dispose Shielded Transfer Tank (contents and tank) RD-C-44 as TRU waste by September 30, 2011 or in accordance with the TRU Waste Processing Center schedule. The Contractor shall manage these 5 Shielded Transfer Tanks, perform necessary surveillance and maintenance, as stated in Clause C.6.3. Contractor responsibility to vent, stabilize and dispose of the listed

tanks and contents is dependent on adequately characterizing waste to determine whether the tank waste can be managed as LLW or TRU Waste. The Contractor shall address the disposition or transition of the Shielded Transfer Tanks in a Phased Construction Completion Report to be submitted by December 31, 2011.

DOE reserves the right to direct the Contractor to treat, stabilize, and dispose of the 5 Shielded Transfer Tanks, including the contents. Should DOE give such direction, the estimated cost to perform the work will be included in the Estimated Cost.

C.2.1.8 Tank Remediation

The Contractor shall stabilize by grouting below ground inactive tanks and remove aboveground tanks identified in the MV ROD Appendix A. Surrounding contaminated soils are treated as other soils and shall be removed, if located outside of capped areas and remediation levels are exceeded. Excavated soils shall be disposed at an approved facility, or used as contour fill under one of the various multilayer caps.

C.2.1.9 Water Treatment

The Contractor shall treat water generated as a result of cleanup actions (such as dewatering of HFIR Impoundments, displaced water from ISG, water generated from well P&A activities, and well development water generated from the installation of groundwater monitoring wells) at existing ORNL water treatment facilities. These facilities include the Process Waste Treatment Plant, Nonradiological Wastewater Treatment Plant, and Liquid Low-Level Waste Evaporation Facility. Groundwater collected from downgradient collection trenches will be transported to a treatment system. The actual water treatment configuration will be established during detailed design as approved by the regulators in the RDR.

C.2.1.10 In-Situ Grouting of Trenches 5 and 7

The Contractor shall complete in-situ grouting of waste contained in Trenches 5 and 7. The actual in-situ grouting configuration shall be established during detailed design, and obtain approval by DOE and the regulators in the RDR.

C.2.1.11 In-Situ Grouting of HRE Fuel Wells

The Contractor shall grout in-situ the HRE Fuel Wells in the Seepage Pits and Trenches Area. The actual in situ grouting configuration will

be established during detailed design as approved by the regulators in the RDR.

C.2.1.12 Well Plugging & Abandonment

The Contractor shall plug and abandon (P&A) all existing wells not required for monitoring. The four hydrofracture injection wells and associated monitoring wells shall be plugged and abandoned. In addition, P&A will be performed on many other, typically shallow groundwater monitoring wells that interfere with installation of multilayer caps and other remediation activities.

C.2.1.13 Environmental Monitoring

Details of surface water and groundwater monitoring shall be developed and approved by the regulators during the remedial design process. In accordance with MV ROD Section 2.11.2.4. "Ecological Monitoring," the Contractor shall prepare an ecological monitoring plan in consultation with the U. S. Fish and Wildlife Service.

C.2.1.14 Land Use Controls

The Contractor shall implement land use controls, as appropriate, in accordance with MV ROD Section 2.11.3 "Land Use Controls," Chapter 7 Land Use Controls Section in the approved MV RAR and the approved LUCIP for the MV Watershed (DOE/OR/01-1977&D5) and MV ROD Table 2.13. The Contractor shall verify annually that land use controls have been implemented and provide information to support DOE's certification that land use controls have been implemented.

C.2.1.15 Activities Relative to the MV ROD

The Contractor shall demolish to slab waste storage facilities (7878, 7842, and 7848) and dispose demolition waste under the SWSA 6 cap. The Contractor shall demolish to slab Straw Shed 7831-C dispose demolition waste under the SWSA 5 cap. The Contractor shall remove contents of Active LLLW Slotting Tank T-13 and grout tank in place. The Contractor shall remove equipment from 7841 Equipment Storage Area and remediate soil as required by the ROD.

C.2.1.16 Additional Activities Beyond the MV ROD

The Contractor shall demolish to slab storage facilities (7863-B, 7842-A, 7822-J, 7878-A&B, 7842-C, unidentified Rubb Tent across from 7878-A, and unidentified material storage sheds) and dispose waste under the SWSA 6 cap. The Contractor shall demolish the following

facilities: 7891 Metal Trailer, and 7847 Vehicle Monitoring Stations; 7810-A Interim Non-regulated Waste Storage; HRE Cryogenic Equipment House and LGWOD Maintenance Support Offices (7505); HFIR Process Waste Pumping Station (7952) and Tank T1, T2 Central Pumping Station (7567); and SWSA 5 Well Driller's Area Tank. The Contractor shall dispose all waste at either a permitted commercial disposal facility or government disposal facility.

C.2.1.17 Spent Nuclear Fuel

The Contractor shall manage SNF that is stored in MV until it can be shipped off site; prepare, package, manifest, track, and ship SNF to INL by December 31, 2003; and package, document, store, and transport the residual waste from the SNF repackaging which is acceptable for processing by the TRU Waste Processing Center (TWPC) by September 30, 2006 in time to meet the TWPC processing schedule.

Under Section C.4 Balance of Program, the Contractor will coordinate with the Oak Ridge National Laboratory for disposition of approximately 160 cubic feet of residual waste which is not currently acceptable for processing at the TWPC; consisting of High Dose Remote Handled Waste (approximately 100 cubic feet), Unirradiated Mixed Oxide Fuel Rod Elements (approximately 50 cubic feet), Residual Spent Nuclear Fuel (approximately .01 cubic feet), and Mixed Waste (approximately 10 cubic feet).

C.3 EAST TENNESSEE TECHNOLOGY PARK (ETTP)

C.3.1 General Scope Descriptions

The following are descriptions of work anticipated for the ETTP, but are not all-inclusive of the requirements in the applicable regulatory documents. Where utility reconfigurations are required to accommodate CROET leases, the Contractor shall provide 180 days written notice to DOE and CROET for the relocation of utilities if required to meet Contract requirements.

The Contractor shall develop and implement a graded approach to maintenance commensurate with the facility condition and schedule for demolition. The Contractor shall determine the minimum appropriate level to maintain the facility in a safe condition until demolition. The Contractor may implement a "run to failure" approach to maintenance for nonessential equipment as approved by the CO. The Contractor shall coordinate with the CO to tailor DOE maintenance and reporting requirements intended for operational facilities (e.g., failed equipment reporting as required by DOE Order 5480.19, Chapter VIII, and DOE O 430.1A, and DOE O 232.1A, Occurrence Reporting and Processing of Operating Information).

C.3.1.1 Remedy Specified in the Zone 1 ROD

The Contractor shall implement the remedy specified in the Zone 1 ROD to include, but not limited to the following:

- Excavate the Blair Quarry burial area and associated contaminated soil, and dispose at an approved facility. Unless excavation of contaminated soil is determined to be necessary for groundwater protection, excavation will not go beyond 10 ft below grade surface (bgs). (The excavation scope has been completed).
- Excavate miscellaneous contaminated soil in the K-895 Cylinder Destruct Facility area and dispose at an approved facility. Unless excavation of contaminated soil is determined to be necessary for groundwater protection, excavation will not go beyond 10 ft bgs. (This scope has been completed, and no more activities are required by the Contractor.)
- Remove scrap-metal and debris from the K-770 Area and dispose at an approved facility. (This scope has been completed, and no more activities are required by the Contractor.)
- Remove sludge and demolish the K-710 sludge beds and Imhoff tanks and disposal at an approved facility. (This scope has been completed, and no more activities are required by the Contractor.)
- Implement the LUCs to prevent exposures to contamination known to exist in Zone 1 surface and subsurface areas, including groundwater, and to contamination which may be present in those Zone 1 areas where characterization is incomplete.
- Implement the Dynamic Verification Strategy (DVS) including any additional remedial actions and changes to the ROD.

C.3.1.2 Remedy Specified in the Zone 2 ROD

The Zone 2 ROD defines the required remedy within the central and industrialized area of the site. The Contractor shall prepare all the necessary CERCLA documentation in support of the following actions. The Contractor shall implement the following:

- Completion of remedial actions for the K-1070-B Burial Ground
- Completion of Dynamic Verification Strategy for EUs 31, 32, and 36, including PCCRs, and CACs
- Completion of characterization for EUs 11, 12, 17, 18, 29, & 38, including PCCRs and Tech memos
- Removal of deteriorating slabs at K-1401, K-1008, and the K-1020 change houses
- Completion of backfilling at the K-1401 basement

The Contractor shall also continue any required surveillance, maintenance, and monitoring during the term of the contract.

C.3.1.3 Remedy Specified in the Site-Wide ROD

The Site-Wide ROD will address the groundwater remedy and remedial actions, if any, remaining to be implemented to achieve the desired unrestricted industrial land use end-state. The Contractor shall prepare all the necessary CERCLA documentation in support of the following actions. The Contractor will implement the following interim actions to support the Site-Wide ROD:

- Chromium 6 source evaluation/treatment for contaminants flowing into Mitchell Branch
- K-1007 Pond remediation
- Sitewide groundwater treatability study

The Contractor shall assist DOE in transitioning responsibility to the follow-on contractor. The Contractor shall also continue any required surveillance, maintenance, and monitoring during the term of the contract.

C.3.1.4 Remedies Specified in the Action Memorandums

The Contractor shall disposition all man-made structures in accordance with the applicable Action Memorandums. These facilities range from the K-25/K-27 process buildings to low complexity, low radiological contaminated facilities such as valve houses. Facilities demolition work includes, but is not limited to, planning; deactivation of utilities; asbestos and other hazardous materials abatement; equipment dismantlement and disposal; structure decontamination and demolition, and waste disposal. The Contractor shall also dispose of other minor structures such as trailers, sheds, and canopies.

In addition to the work accomplished during the period October 1, 2003 to September 30, 2007, the Contractor shall accomplish the following during the time period October 1, 2007 to December 31, 2011:

1. K-25 Building Demolition -- Demolition and disposition of the K-25 Gaseous Diffusion Process Building and all ancillary building inside the "U" other than the K-1600 complex. The K-25 Building consists of 54 building units occupying a 1,637,170 square foot "footprint" with over 4.7 million square feet of total floor area. Work includes, but is not limited to, the abatement of hazardous material, the removal, segmentation, and mining of high risk process equipment, the immobilization (foaming) of process piping and equipment, the demolition of the building structure and the management of wastes generated from the project. Waste is to be characterized, packaged, transported and disposed. The site shall be backfilled, graded, seeded, and restored in accordance with National Historic Preservation Act agreements. The Contractor will prepare and

submit a Phased Construction Completion Report documenting the completion of these activities.

2. K-27 Building Demolition -- Removal and waste disposition activities necessary to place the four-level K-27 Gaseous Diffusion Process Building in a safe condition ready for full scale demolition. The K-27 Building consists of nine building units occupying a 383,000 square foot "footprint" with over 1.1 million square feet of total floor area. Work includes, but is not limited to, the removal, segmentation, and mining of all high risk equipment and piping; abatement of hazardous material as necessary for removal of high risk components; and the management and disposition of wastes generated from the project, such that the Contractor can make and DOE approve a Criticality Incredible Determination. The Contractor will submit a Phased Construction Completion Report documenting the completion of these activities. Completion of these activities will establish the K-27 Building as ready for full scale demolition using heavy equipment from outside the building and establish that no personnel will have to enter the building for S&M activities. A characterization report on the structure and equipment will be prepared to document compliance with current waste acceptance criteria at NTS, EMWMF, or other acceptable disposal facility.

3. Poplar Creek Facilities D&D - Work includes, but is not limited to, the abatement of hazardous material, the demolition of the building structure and associated tie-lines and the management of wastes generated from the project for the K-413, K-1231, and K-1233 buildings. Waste is to be characterized, packaged, transported and disposed. The Contractor will prepare and submit a Phased Construction Completion Report documenting the completion of these activities.

4. ETTP Main Plant facilities D&D - Work includes, but is not limited to, the abatement of hazardous material, the demolition of the building structure and management of waste generated from buildings K-1035, K-1036-A, K-1055, K-1058, K-1059, K-1415, K-1416, and K-1066 G Yard, and Building K-25/CNF tie lines. Waste is to be characterized, packaged, transported and disposed. The Contractor will prepare and submit a Phased Construction Completion Report documenting the completion of these activities.

C.3.1.5 UF6 Cylinder and Other Radioactive Sources Disposition

There are approximately 7000 UF6 cylinders stored at ETTP and designated for processing at the DOE Portsmouth, Ohio facility under a separate prime contract to DOE. In addition, highly enriched uranium materials designated as inventory, Special Nuclear Material, Radioactive Low Specific Activity material, contaminated Lithium and radioactive sources exist at the ETTP. The Contractor

shall properly manage this material and carry out all activities necessary to disposition and remove the material from the site. This work includes but is not limited to cylinder inspection and maintenance, monitoring, characterization, over-pack design and fabrication, packaging, transportation and transfer, sale or disposal at an approved facility. (This scope has been completed, and no more activities are required by the Contractor.)

C.3.1.6 ETTP Waste Operations

C.3.1.6.1 TSCA Incinerator

The Contractor shall operate and maintain the TSCAI for treatment of DOE waste in compliance with Federal and state regulations and permits through September 30, 2009, if needed. DOE waste to be treated is the waste identified in the FY 2008 – 2009 Burn Plan (dated May 2008), and any subsequent burn plan approved by DOE. Responsibilities include: facility operation and maintenance, waste acceptance, waste repackaging, developing, maintaining and executing the burn plan (as approved by DOE), acquiring and complying with any permits, disposal of residues and secondary waste from operations included in the scope and placing the facility in safe shutdown status upon completion of waste treatment. The Contractor shall be responsible for notifying, responding to, or otherwise coordinating with regulators regarding compliance issues, as required by permits and regulations. The Contractor may choose to provide more cost-effective alternative treatment in lieu of incineration for any waste on the burn plan that was accepted for incineration prior to this contract modification, as long as the alternative treatment meets all regulatory requirements and results in final disposition of the waste.

C.3.1.6.1.1 RCRA Closure of TSCAI

The Contractor shall perform closure of the TSCAI in accordance with applicable regulatory requirements, permits, and agreements.

C.3.1.6.2 Central Neutralization Facility (CNF)

The Contractor shall operate the CNF in compliance with the Clean Water Act and Clean Air permits issued to the facility, as well as applicable federal and state regulations. Wastewater for treatment includes, but is not limited to the TSCAI, the ETTP Steam Plant, environmental restoration

(ER) activities, EMWMF leachate, and any other wastewaters as directed by DOE. The Contractor shall be responsible for the final closure of the facility in accordance with applicable regulatory requirements, permits, and agreements.

C.3.1.6.2.1 CNF Replacement

The Contractor shall provide replacement capability for treatment of wastewater from the TSCAI and other sources that are currently treated or would be treated at the CNF. Responsibilities include design, procurement, permitting, fabrication, installation, procedure development, startup testing and turnover to operations and subsequent operation and maintenance of all necessary components, including piping to allow continued use of the current discharge point. The replacement treatment capability shall be fully operational as required to meet the Contractor's schedule for CNF closure.

C.3.1.7 Transportable Compressed Gas Recontainerization System (TCGRS)

The Contractor shall complete closure of TCGRS in compliance with applicable federal, state and DOE requirements.

C.3.1.8 Landlord Responsibilities

The Contractor shall be responsible for all landlord activities for the ETTP not otherwise provided under DOE lease or contract. Major components of the work include but are not limited to:

- Fire Protection Program.
- Electrical power distribution to the ETTP site.
- Safeguards and Security program
- Groundskeeping and maintenance
- Environmental, safety and health programs other than those conducted by tenants or other prime contractors to DOE
- Access control/badging/lock and key (ref. C.6.4.2)

C.3.1.9 Support Reindustrialization

The Contractor shall support the transfer (i.e., lease or title transfer) of facilities and land parcels on the Oak Ridge Reservation as directed by DOE and within the established funding for this subproject. Specifically, the Contractor shall support ongoing DOE responsibilities in the area of Reindustrialization as follows:

- Interface with current and potential tenants and provide necessary support to DOE throughout the lease and or transfer cycle:
- Assist DOE with the implementation of public outreach and information programs to support the Reindustrialization Program;
- Coordinate and produce requested NEPA, safety, and environmental documentation in support of reindustrialization efforts;
- Provide conceptual drawings and plans, and other administrative or field support (e.g., badging, fence relocation, etc) to facilitate the development of Reindustrialization opportunities.

C.4 BALANCE OF PROGRAM (BOP)

Balance of Program scope described in sections C.4, C.5, and C.6 herein, consists of all work activities not included in ETTP, MV, Legacy LLW, and Legacy MLLW, including but not limited to high priority risk-reduction projects at Y-12, ORNL, and offsite. Additionally the scope includes waste management, infrastructure surveillance and maintenance, general site operations, and planning for the remainder of EM actions in Oak Ridge.

C.4.1 Completion Reports

The Contractor shall complete and/or execute the work in Section C.4, obtaining DOE and Regulatory approval of applicable completion reports.

C.4.2 Y-12 Plant High Priority Risk Reduction Projects

C.4.2.1 9201-2 Water Treatment System

In accordance with the Upper East Fork Poplar Creek (UEFPC) Phase I ROD (DOE/OR/01-1951&D3), the Contractor shall design, construct, and operate the Building 9201-2 Water Collection and Treatment System to mitigate off-site mercury surface water releases to UEFPC by achieving the mercury concentrations stated in the ROD. The Contractor shall demolish the existing treatment system and properly dispose of demolition material. (This scope has been completed, and no more activities are required by the Contractor).

C.4.2.2 East End Volatile Organic Compound (EEVOC) Plume Bioremediation

In accordance with the approved treatability study work plan (DOE/OR/01-1931&D2), the Contractor shall evaluate the efficacy of

in-situ bioremediation to enhance and/or replace the existing pump and treat system for the EEVOC Plume at the Y-12 Complex. (This scope has been completed, and no more activities are required by the Contractor).

C.4.2.3 Boneyard/Burnyard

In accordance with the Bear Creek Valley (BCV) ROD (DOE/OR/01-1750&D4), the Contractor shall complete site restoration activities at the Boneyard/Burnyard, and all necessary completion documentation. (This scope has been completed, and no more activities are required by the Contractor).

C.4.2.4 UEFPC Soils ROD

The Contractor shall prepare and obtain DOE and regulator approval of a CERCLA ROD for UEFPC soils that will achieve defined risk goals. (This scope has been completed, and no more activities are required by the Contractor).

C.4.3 ORNL High Priority Risk Reduction Projects

C.4.3.1 Bethel Valley (BV) Groundwater Engineering Study

In accordance with the approved BV ROD (DOE/OR/01-1862&D4), the Contractor shall complete and obtain DOE and regulator approval of the BV Groundwater Engineering Study to supplement existing groundwater data, further identify sources of groundwater contamination, and to support planned remedial actions. (This scope has been completed, and no more activities are required by the Contractor).

C.4.3.2 Corehole 8 Plume Source

Complete the non-time critical removal action in Action Memorandum AM (DOE/OR/01-1749&D1) at the Oak Ridge National Laboratory. This work includes, but is not limited to, excavation of Tank W-1A and the contaminated soil (both transuranic and low level). The Contractor shall containerize and prepare the transuranic for shipment to WIPP. WIPP shall be responsible for certification and shipment of transuranic wastes. The Contractor shall be responsible for the management and diposition of Low Level and Mixed Low Level Waste. The Contractor will obtain DOE and regulatory approval of all completion documentation.

C.4.3.3 Surface Impoundments Operable Unit (SIOU)

The Contractor shall complete all activities in accordance with the SIOU Record of Decision, including sediment and sub-impoundment soil removal and stabilization, waste disposal, treatment plant demolition, site restoration, demobilization, and obtain DOE and regulator approval of completion documentation. (This scope has been completed, and no more activities are required by the Contractor).

C.4.3.4 Molten Salt Reactor Experiment

Complete that part of the Federal Facility Agreement remedial action which removes the Uranium-233 and places the MSRE facility in a safe and stable configuration for the fuel salt removal action. Complete the fuel salt and fuel drain tank salt removal activities in compliance with the FFA milestones. Work will include surveillance and maintenance through the period of the Contract and a determination of the best method for removal of the salt. The Contractor will obtain DOE and regulatory approval of appropriate regulatory documentation.

C.4.3.5 Tower Shielding Facility

The Contractor shall defuel the Tower Shielding Facility. Work includes but is not limited to prepare/revise the associated safety documentation, emergency management, and safeguards and security plans; remove and package the fuel; and ship the fuel to an approved disposal facility. (This scope has been completed, and no more activities are required by the Contractor).

C.4.3.6 TRU Waste Treatment Technical Support

The Contractor shall provide technical support to DOE in their oversight of the TRU Waste Treatment contract in accordance with letter dated June 2, 2000, from J. T. Thiesing to J. R. Burgan, "Support for the Transuranic Waste Project."

C.4.4 Offsite Projects

The Contractor shall complete all obligations of the Consent Orders (TDEC case numbers 90-3442, 90-3443, 90-3444, and 88-3434) and Memorandums of Understanding Regarding the Implementation of Consent Orders for remediation activities at three contaminated privately owned sites. These activities include but are not limited to those outlined below.

C.4.4.1 David Witherspoon 901 Site

The Contractor shall conduct removal actions of contaminated buildings, debris, soil and sediments, finalize the RI/FS, determine the groundwater classification, perform surveillance and maintenance, provide technical support to the Tennessee Department of Environment and Conservation (TDEC) resulting in a no-action or limited action ROD and issuance of a TDEC Letter of Completion.

C.4.4.2 David Witherspoon 1630 Site

The Contractor shall conduct removal actions of contaminated debris, soil and sediments, upgrade landfill cap, determine the groundwater classification, perform surveillance and maintenance, and provide technical support to the TDEC resulting in a no-action or limited action ROD and issuance of a TDEC Letter of Completion.

C.4.4.3 Atomic City Auto Parts

The Contractor shall dispose the TDEC-generated removal action waste, finalize the remedial investigation/feasibility study, perform surveillance and maintenance, and provide technical support to the TDEC resulting in a no-action or limited action ROD and issuance of a TDEC Letter of Completion. (This scope has been completed, and no more activities are required by the Contractor).

C.4.5 Waste Management Facility Transfer

The Contractor shall support the transfer of WM facilities identified in Appendix F. Support includes, but is not limited to, permit modifications/transfers, assignment of subcontracts, and any other administrative requirements necessary to accomplish the transfer.

C.4.6 Newly Generated Waste Management

The Contractor shall operate and maintain the WM systems (storage, treatment, and disposal) to provide systems that are available to accept, stage, store, treat (as needed), and dispose wastes and materials generated at the ORNL, Y-12 and ETTP sites. At Y-12 and ORNL, the Contractor shall operate the WM systems until transferred. These facilities are identified in Appendix F.

Operation and maintenance of Y-12 WM systems was transferred to NNSA effective October 1, 2005.

C.4.7 Waste Operations

C.4.7.1 ORNL Waste Operations

The Contractor shall operate and maintain the Liquid Low Level Waste System, Gaseous Waste System, and Process Waste System to provide systems that are available to accept, treat, and dispose of wastes generated by ongoing research and development, environmental restoration, D&D, and other ORNL/DOE programs. Operations shall be conducted in compliance with environmental permits issued to the facilities. The Contractor is responsible for operating and maintaining systems and subsystems required to support operations until facilities and related scope are transferred.

C.4.7.2 Y-12 Waste Operations

The Contractor shall operate and maintain the liquid and solid waste treatment systems to provide the systems that are available to accept, treat, and dispose of wastes generated by ongoing production, research and development, environmental restoration, D&D, and other Y-12 Plant/DOE programs. Operations shall be conducted in compliance with any and all environmental permits issued to the facilities. The Contractor shall focus on the use of cost effective innovative approaches and creative ideas in performing waste operations. Facilities included in operations scope are West End Treatment Facility, Central Pollution Control Facility, EEVOC, East End Mercury Treatment Facility, Central Mercury Treatment Facility, Groundwater Treatment Facility, and Uranium Chip Oxidation Facility until such time as facilities are transferred.

Y-12 waste operations and the associated facilities as listing in the above paragraph were transferred to NNSA effective October 1, 2005.

C.4.7.3 Environmental Management Waste Management Facility

The Contractor shall operate and maintain the EMWMF for the purpose of accepting CERCLA waste. The Contractor shall be responsible for the design and closure of existing cells, and the design and construction of additional capacity as specified through CERCLA decision documents to meet life cycle waste disposal needs. Responsibilities include managing the facility waste acceptance criteria (WAC) in accordance with approved plans and procedures to maximize the cell's capacity in the most cost effective manner. Additionally, the Contractor will complete an engineering evaluation of options to modify the existing design for the next expansion of the EMWMF and submit a report to DOE. The evaluation should determine the feasibility

and potential cost and schedule implications of modifying the design to facilitate future expansions to beyond 1.7 million cubic yards.

C.4.7.4 ORR Sanitary/Industrial Landfills

The Contractor shall operate and maintain the ORR Landfills consisting of Sanitary/Industrial and Construction/Demolition Landfills located at the Y-12 Site. The landfills shall be operated in accordance with permits, regulations, and orders. The Contractor shall accept and disposition waste meeting the WAC from all three sites and approved generators. The Contractor shall also be responsible for the design, construction and operation of landfill expansions and landfill closures as required to maintain landfill capacity.

C.5 LEGACY WASTE STORAGE AND DISPOSAL

The Contractor shall safely manage, treat, and dispose (dispose is defined as acceptance by the receiver/disposal site) of all legacy low level waste (LLW) and legacy mixed low level waste (MLLW) stored on the Oak Ridge Reservation (ORR) by September 30, 2005, with the exception of the following "no-path" waste streams: (The Contractor submitted the Final Declaration of Completion on September 30, 2005 and DOE accepted the declaration on October 24, 2005 for Legacy Waste in the September 30, 2005, milestone).

- 29 remote handled, LLW vaults
- Two cans containing strontium radioisotope thermal generator pins
- 116 containers of classified D, F, and U codes waste
- One container of remote handled mixed waste
- 150 containers of combustion code residue waste
- 18 containers of radioactively contaminated Dioxin/Furan waste
- One non-accessible container of legacy LLW stored in Facility 7572
- One canister of remote handled legacy LLW stored in Facility 7827

The Contractor shall safely manage and dispose all other legacy waste stored on the ORR by December 31, 2011. Other legacy waste includes, but is not limited to Legacy PCB FFCA waste, and ORR legacy Industrial/Chemical Waste. Under Section C.4 Balance of Program, the Contractor shall identify feasible disposition outlets for the "no-path" waste streams described above and disposition the "no-path" waste streams by December 31, 2011, where a feasible disposition outlet is identified and if funding is available.

In addition, the Contractor shall dispose of 500 m^3 of additional LLW from Oak Ridge National Laboratory (ORNL) as part of the September 30, 2005 milestone, as well as accept and provide compliant storage for all FY 2005 forecasted newly generated ORNL transuranic (TRU) and mixed low level waste. The Contractor shall dispose of 3 containers of newly generated remote handled LLW stored in Facility 7827 as part of the September 30, 2005 milestone.

Major components of work through the term of the contract include, but are not limited to:

- Documented evidence of the origin, storage, treatment, and disposal of waste types for the purpose of waste and compliance tracking and regulatory reporting;
- Safe storage which includes those activities necessary to provide safe and stable conditions of the waste, waste containers, storage facilities, and/or structures, and monitoring and operating equipment;
- Characterizing, profiling, packaging, treatment as required, manifesting, land disposal restrictions (LDR) compliance, shipment, tracking, and compliant disposal;
- Obtaining approval of RCRA closure in place and in-situ capping of mixed waste (MW) identified in the ORR STP as East Chestnut Ridge Waste Pile;
- RCRA closure of ORR MW facilities, unless transitioned or transferred;
- TSCA and/or RCRA closure of PCB FFCA waste facilities, unless transitioned or transferred;
- RCRA closure of ORR hazardous waste facilities, unless transitioned or transferred;
- Transport of stored TRU waste to the TRU Waste Processing Center in time to meet the TWPF processing schedule;
- RCRA closure of mixed TRU waste facilities, unless transitioned or transferred;
- Closure of LLW facilities, unless transitioned or transferred.
- The Contractor shall provide management of the TRU Sludge inventory and integrate with the TWPC contractor to provide support for sludge processing, including but not limited to obtaining measurements of sludge inventory in waste tanks, collection of required sludge samples to support sludge processing design considerations, allowing use of Tank W-35 for mixing and sampling sludge during processing campaigns, etc.
- The Contractor shall provide support to the processing of TRU solid waste as necessary to accomplish TRU waste disposition, such as providing temporary storage of processed TRU waste until waste can be shipped by the TWPC to WIPP, as directed by DOE.

C.5.1 ToxCo

The Contractor shall maintain ToxCo materials (including sodium and lithium) in safe storage configuration at ETTP and ORNL (Melton Valley) and continue all required surveillance and maintenance activities for the contract period. The Contractor shall disposition the 190 ton overage materials and scrap and macroencapsulate copper as necessary to meet Zone 1 regulatory milestones.

C.6 GENERAL PROJECT SUPPORT

In the course of executing the work required to achieve the end points described in Section C, the Contractor shall conduct the following program support activities. These activities provide the infrastructure and general program operations necessary to support the EM Program closure mission.

C.6.1 Planning for Post FY11 Actions

The Contractor shall provide project planning and baseline support for the remaining cleanup decisions and actions that are necessary to complete the EM mission in Oak Ridge. The remaining cleanup actions include the Bear Creek burial grounds; The White Wing Scrap Yard; UEFPC soils, groundwater, and surface water; BV soils, sediments, and groundwater; Chestnut Ridge; Disposal Area Remedial Action; Alpha 4 and other excess EM facilities at Y-12 and ORNL; surplus waste storage facilities at Y-12 and ORNL; remaining DOE facilities at ETTP requiring D&D; and remaining ETTP remedial actions. Basic remediation strategies for these actions will be developed, documented, and maintained in the lifecycle baseline.

C.6.2 Long-Term Surveillance and Maintenance, Environmental Monitoring and Reporting

The Contractor shall conduct required long-term surveillance and maintenance (LTSM), environmental monitoring, and reporting for remediated sites in compliance with laws, regulations, permits, agreements, DOE orders, and decision documents. These LTSM activities shall ensure that each site/facility remains in a safe and stable condition, monitoring and safety-related systems and equipment remain operable, site security and access controls are continuously provided, structural integrity is maintained, and the requirements of applicable CERCLA decisions are followed. The Contractor shall perform all required sediment, surface water, and ground water monitoring for contaminant transport modeling and determination, remedial effectiveness determination, and exit pathway evaluation and determination. The Contractor shall also conduct environmental monitoring and reporting in support of emergency response activities.

The Contractor shall perform environmental monitoring to verify the effectiveness of remedial actions and the protection of ecological receptors, and to support future decision-making. Surface water and groundwater monitoring shall be employed as appropriate to verify compliance with Applicable, Relevant, and Appropriate Requirements (ARARs) and to verify reduction of off-site contaminant releases to acceptable levels. Postremediation radiation surveys and sampling (including sampling for radionuclides and nonradionuclides, such as metals, organics, and PCBs) will be performed to ensure that remedial actions are protective of human health.

The Contractor shall provide updates to required environmental monitoring reports including, but not limited to, the Remediation Effectiveness Report, the Annual Site Environmental Report, CERCLA 5-year reviews, and updating the CERCLA Administrative Record.

C.6.3 Surveillance and Maintenance

The Contractor shall develop and implement a graded approach to surveillance and maintenance commensurate with the facility condition and schedule for demolition. The Contractor shall determine the minimum appropriate level to maintain the facility in a safe condition until demolition. The Contractor may implement a "run to failure" approach to maintenance for nonessential equipment as approved by the CO. The Contractor shall coordinate with the CO to tailor DOE surveillance and maintenance and reporting requirements intended for operational facilities (e.g., failed equipment reporting as required by DOE Order 5480.19, Chapter VIII, and DOE O 430.1A, and DOE O 232.1A, Occurrence Reporting and Processing of Operating Information).

The Contractor shall perform surveillance and maintenance of all remaining EM sites and facilities to ensure they continue in a safe and stable condition pending site remediation and/or facility demolition, in accordance with applicable regulatory, safety and security requirements through the contract period, or until they are dispositioned or transferred. The Contractor shall also provide the necessary S&M to maintain protectiveness following remedial action, monitor to assess the effectiveness of remedial action, and coordinate EM Program environmental monitoring throughout the Oak Ridge Reservation. The Contractor shall evaluate monitoring data, provide statements and certifications as to the effectiveness of remedial actions and implementation of land use controls and provide necessary reports on such findings. The scope includes S&M of inactive waste disposal areas, stabilization ponds, legacy material storage areas, tanks, leak sites, contaminated vegetation, former reactor facilities, former isotope production facilities, and former waste processing facilities. The Contractor shall provide all necessary S&M activities which include, but are not limited to scheduled site inspections for status of equipment, structures, and safety parameters, RAD surveys, facility access and security control, vegetation control, landfill cap repairs, fence and gate repairs, subsidence repair, erosion control and repair, trash and debris pickup and disposal, snow removal at SWSA entrances, collection and disposal of groundwater from basins, basin wall monitoring, maintenance and repair to ditches and basin walls, site postings and signs, sample collection for waste characterization, waste packaging and transfer, roof repair and maintenance, filter testing and replacement, HVAC maintenance, elevator maintenance, and instrumentation calibration.

The Contractor shall conduct non-routine S&M activities including, but not limited to the deactivation of former reactor facilities, isotope production facilities, and waste processing facilities; disposition of radioactive sources; deactivation of unnecessary utilities; and disposition of surplus contaminated equipment.

C.6.4 Safeguards and Security

The Contractor shall provide appropriate levels of protection against unauthorized access: theft, diversion, loss of custody of special nuclear material; espionage; loss or theft of classified matter or Government property: and other hostile acts that may cause unacceptable adverse impacts on national security or the health and safety of DOE and Contractor employees, the public, or the environment. The Contractor shall adjust to the Security Condition (SECON) determined by DOE. The Contractor shall promptly prepare and submit applications for security clearances as required for work under this contract. Safeguards and Security requirements are stipulated in the List of Applicable Directives, Appendix E. The Contractor shall provide a computer security program to provide and maintain automated information systems, test systems and maintain networks, provide training, identify threats, vulnerabilities, and assess risks to the systems, and oversee subcontractor computer security programs.

C.6.4.1 Information Security

The Contractor shall maintain an information security program. This program will include, but not be limited to, OPSEC, protection of classified and unclassified automated information, and classification/declassification. The Contractor shall provide a Classification Officer who is authorized to exercise both derivative classification authority and derivative declassification authority, and assign classifications to appropriate documents, material and equipment originated or generated under this contract. The Contractor shall establish and implement a declassification capability that will provide compliance with the National Security Information declassification requirements in Executive Order 12958, and satisfy DOE directives regarding the conduct of ongoing declassification reviews of Restricted Data and Formerly Restricted Data.

C.6.4.2 Visitor Control/Badging/Lock and Key

The Contractor shall perform visitor control functions for visitors at ETTP. The Contractor is responsible for creation and issuance of the DOE standard badge to EM program personnel as necessary. The Contractor is also responsible for destruction of these badges and maintenance of records reflecting badge issuance and destruction. The Contractor shall implement a lock and key program for facilities and rooms. The Contractor shall provide combination changes and repairs to classified repositories.

C.6.5 Analytical Services

The Contractor shall provide Analytical Services and/or Laboratories as required to provide analytical data with sufficient quality to meet data quality objectives. The Contractor shall support in the DOE Consolidated Audit Program (DOECAP) for both analytical services laboratories and waste treatment, storage, disposal, and recycling facilities (TSDFs). Such audit support shall be limited to those laboratories and TSDFs related to the Oak Ridge activities under the contract.

Analytical Services and laboratories shall be operated in accordance with one or more of the following references: 10 CFR 830.120, DOE Order 414.1, ASME-NQA-1, ANSI/ASQC E4, and/or ISO 9000.

C.6.6 Public Relations and Media Support

The Contractor shall provide public relations services to include but not limited to stakeholder support, media relations, tours, visits, access to documents, update the Public Involvement Plan every 3 years, and prepare a Preliminary Assessment/Site Inspection Report. The Contractor shall provide necessary technical support to DOE and the FACA-chartered SSAB.

C.6.7 Litigation Management

The Contractor shall maintain a legal function and demonstrate sound litigation management practices to include litigation, arbitration, legal advice on environmental matters, procurement, employment, labor, and the Price-Anderson Amendment Act. The Contractor shall also review and interpret legislation and laws; research and draft memorandum, and manage and oversee outside legal counsel.

The Contractor shall provide litigation support to the Government when judged necessary by the Contracting Officer (CO) (or CO Representative) in cases of actual or threatened litigation, regulatory matters, or third-party claims. Litigation support includes, but is not limited to: case preparation assistance; document retrieval, review and reproduction; witness preparation and testimony; expert witness testimony; and assisting Government counsel as necessary in response to discovery or other information related activities responsive to any legal proceeding.

The Contractor shall provide timely support for legacy litigation, management of legacy worker compensation claims, and responses to request for legacy documents. The legacy litigation support is provided in response to individual case requests by DOE legal staff or in response to other legally enforceable requirements. The management of legacy worker compensation claims includes

claim investigation, support to DOE in estimating, evaluating, and managing such claims.

C.6.8 Audit Support Services

The Contractor shall provide audit support services for General Accounting Office, Inspector General, Defense Nuclear Facilities Safety Board, Environmental Protection Agency, TDEC and other external audits that examine and evaluate EM program activities.

C.6.9 Transportation Services

The Contractor shall be responsible for infrastructure services including, but not limited to, transportation, traffic management, shipping/receiving, vehicle and equipment maintenance, and management and mail services. In addition, the Contractor will provide telephone billing support to DOE. The Contractor will not be held liable for non-payment by tenants.

C.6.10 Health Effects

The Contractor shall provide for health programs/ambulatory care, beryllium and radiation worker health surveillance programs and personnel monitoring program. These services are required to assess, monitor, record data, and provide medical support for current site workers who are or may be exposed to radiological and hazardous materials. The Contractor shall maintain medical records of former workers and make them available for health effects studies as requested by DOE.

Medical records shall be maintained in accordance with Public Law 102-484, DOE Order 440.1, and will last until the program and documents are turned over to DOE at the end of this contract.

C.6.11 Occupational Health

The Contractor shall provide the following classes of examinations for the purpose of providing initial and continuing assessment of employee health: pre-placement in accordance with the Americans with Disabilities Act (42 United States Code 12101), qualification examinations, fitness for duty, medical surveillance and health monitoring, return to work health evaluations, and termination examinations. The occupational medical services shall be informed of job transfers and will determine whether a medical evaluation is necessary. The physician responsible for the delivery of medical services or his/her designee will inform Contractor management of appropriate employee work restrictions.

C.6.12 Post Retirement Medical Benefits and Long-Term Disability

The Contractor shall manage the post retirement medical benefits and long term disability program for ORR EM workers retiring on or after April 1, 1998. . The Contractor shall support the post retirement medical benefits and long term disability program for ORR EM workers that retired prior to April 1, 1998

C.6.13 Emergency Management

The Contractor shall provide Emergency Management Services to include emergency planning and preparedness as well as response to possible incidents involving nuclear, radiological and hazardous materials on site.

Emergency management shall be performed at the levels specified in the List of Applicable Directives, Appendix E until the major nuclear facilities' hazards are removed or ameliorated, or the facilities are demolished. A reduced level of emergency services may be allowed once the major hazards are removed and as DOE approves them.

C.6.14 Nuclear Criticality Safety

The Contractor shall establish and maintain a criticality safety program that (1) applies to fissionable materials that are produced, processed, stored, transferred, disposed, or otherwise handled, (2) evaluates and documents operations with fissionable materials which pose a criticality accident hazard, (3) utilizes a graded approach that is responsive to changing conditions resulting from various stages of facility D&D, (4) provides for mitigation of consequences to personnel and property from a criticality accident, and (5) addresses nuclear safety requirements established by laws and regulations, as well as applicable American Nuclear Society/ANSI nuclear criticality safety standards identified directly or referenced in the requirements set appended to this contract. Nuclear criticality safety requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.15 Nuclear Safety

The Contractor shall develop and maintain the safety analysis and controls for nuclear facilities, operations, and activities. Readiness determinations for restart of activities and for start-up of new activities shall be required to demonstrate readiness to safely start the activity. Nuclear safety requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.16 Occupational Safety

The Contractor shall meet occupational safety and health requirements (including but not limited to industrial safety, fire protection, construction safety, firearms

safety, explosive safety, industrial hygiene, pressure safety and motor vehicle safety) for EM program operations and conditions. Occupational safety requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.17 Fire Protection

The Contractor shall maintain a fire protection program that supports a level of fire protection and fire suppression capability sufficient to minimize losses from fire and related hazards. Fire protection requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.18 Quality Assurance Program

The Contractor shall perform work on site in accordance with applicable quality assurance requirements. Quality assurance requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.19 Records Management and Document Control

The Contractor shall provide a records management program. This includes, but is not limited to, maintenance, storage, protection and disposition of active and inactive records, retrieval of archived records, and support of or to ongoing discovery efforts for litigation. All records subject to the management of the Contractor, including records created prior to the effective date of this contract, are to be inventoried, scheduled and dispositioned prior to contract closeout.

Records required for post closure Long-Term Stewardship (LTS) should be identified and managed appropriately. This includes, but is not limited to, Geographic Information System, OR Environmental Information Management System, and CERCLA and FOIA Reading Room documents. The Contractor shall provide a complete records inventory list in a hardcopy and electronic format to the post-closure records custodian identified by the CO. The Contractor shall lease and maintain a CERCLA required Reading Room through contract closeout.

C.6.20 Radiation Protection Program

Consistent with 10 CFR 835 and the Departmental Implementing Guides, the Contractor shall conduct site activities in compliance with a DOE approved Radiation Protection Program to minimize occupational exposure to internal radiation, direct, external exposure to ionizing radiation as well as to minimize the spread of contamination. The As Low As Reasonably Achievable (ALARA) process shall be applied to EM program activities. Radiation protection requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.21 Environmental Permits

Where applicable, consistent with the provisions of Section 121E of CERCLA, the Contractor shall obtain, maintain, and comply with environmental permits as required and allowed by law such as, but not limited to, the RCRA; the substantive requirements of the CERCLA; the Clean Air Act; the Clean Water Act; and the OR FFA. Environmental protection requirements are stipulated in the List of Applicable Directives, Appendix E.

C.6.22 Long-Term Stewardship

The Contractor shall consider LTS issues in the cleanup decision-making processes. Even though the LTS activities after site closure are not included in the scope of this contract, the activities, plans, and infrastructures needed to provide for the site's successful transition to LTS are included.

The Contractor shall support DOE in its efforts to provide properly placed institutional controls and engineered controls that are consistent with the CERCLA commitments. The Contractor shall provide surveillance and maintenance required to maintain protectiveness prior to cleanup, monitor to assess the effectiveness of cleanup, and coordinate environmental monitoring throughout the ORR.

The Contractor shall assist DOE's analysis of site transfer readiness into LTS. The readiness analysis shall include the following: authority and accountability, site conditions, engineered controls, institutional controls, regulatory requirements, management of financial and human resources, information management, public outreach, and management of natural, cultural and historical resources.

The Contractor shall assist DOE in coordination and communication regarding LTS planning and transition with involved parties including local stakeholders and regulators.

The Contractor shall assist DOE with the development and distribution of the annual report on the effectiveness of institutional and engineering controls for transferred property. This applies to the property transferred to CROET prior to the completion of this contract.

C.6.23 Support for Natural Resource Damage Assessment

The Contractor shall provide support to DOE for the purpose of complying with the Natural Resource Damage Assessment requirements under Section 107(a) and 120(a) of CERCLA. DOE is liable for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damage. CERCLA and the National Contingency Plan establish DOE as both a CERCLA lead

response agency on Department facilities and a trustee for natural resources under its jurisdiction. As such, the Department must respond to releases of hazardous substances from DOE's facilities, and is liable for the restoration of natural resources that are lost or injured as a result of such releases or from the response actions.

C.6.24 Historic Preservation / Cultural Resources

The Contractor shall ensure that cultural resource management issues are considered early in the environmental cleanup decision-making process, and shall ensure compliance with applicable laws governing cultural resources and historic preservation such as, but not limited to, the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), the Archaeological and Historic Preservation Act, the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and Executive Orders 11593 and 13287. The Contractor is to support DOE by ensuring that information needed to comply with these requirements is collected and compiled, processes prescribed by these requirements are followed, and that necessary reports are prepared, cleared for public release, and submitted in a timely manner. This support will include, but not be limited to, development and/or implementation of any Memorandum of Agreement(s) with related actions required for compliance.

C.6.25 Facilities and Materials Reuse Programs

The Contractor shall provide in Fiscal Year 2004 and 2005 staff support to the DOE Facilities and Materials Reuse program in the area of recycling and materials reuse. The scope includes support for development of metals release and recycle policy, assessment of options for metal recycle for D&D and waste management, recycling existing surplus metal and equipment inventories, and implementing a process for disposition of project-generated scrap metal and surplus equipment.

C.7 ABBREVIATIONS AND ACRONYMS

ALARA	As Low As Reasonably Achievable
AM	Action Memorandum
ANS	American National Society
ANSI	American National Standards Institute, Inc.
ARARs	Applicable, Relevant, and Appropriate Requirements
BCV	Bear Creek Valley
BOP	Balance of Program
BV	Bethel Valley
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
CFR	Code of Federal Regulations
CNF	Central Neutralization Facility

CO	Contracting Officer
CROET	Community Reuse Organization of East Tennessee
D&D	Decontamination and Demolition
DOE	U.S. Department of Energy
EEVOC	East End Volatile Organic Compound
EM	Environmental Management
EMWMF	Environmental Management Waste Management Facility
ER	Environmental Restoration
ES&H	Environment, Safety and Health
ESD	Explanation of Significant Differences
ETTP	East Tennessee Technology Park
FFCA	Federal Facility Compliance Act
FFA	Federal Facility Agreement
FOIA	Freedom of Information Act
FY	Fiscal Year
HFIR	High Flux Isotope Reactor
HRE	Homogeneous Reactor Experiment
INEEL	Idaho National Engineering and Environmental Laboratory
ISV	In Situ Vitrification
LCB	Life-Cycle Baseline
LDR	Land Disposal Restrictions
LUC	Land Use Controls
LLLW	Liquid Low-Level Waste
LLW	Low-Level Waste
LTS	Long-Term Stewardship
MLLW	Mixed Low-Level Waste
MSRE	Molten Salt Reactor Experiment
MV	Melton Valley
MVST	Melton Valley Storage Tanks
MW	Mixed Waste
NaF	Sodium Fluoride
NG	Newly Generated
NHF	New Hydrofracture Facility
NNSA	National Nuclear Security Administration
NTS	Nevada Test Site
OPSEC	Operations Security
OR	Oak Ridge
ORNL	Oak Ridge National Laboratory
ORR	Oak Ridge Reservation
PCB	Polychlorinated Biphenyl
PMP	Performance Management Plan
RA	Remedial Action
RAR	Remedial Action Report
RCRA	Resource Conservation and Recovery Act
ROD	Record of Decision
SC	Office of Science

SIOU	Surface Impoundments Operable Unit
SNF	Spent Nuclear Fuel
SNM	Special Nuclear Material
SOW	Statement of Work
STP	Site Treatment Plan
SWSA	Solid Waste Storage Area
TDEC	Tennessee Department of Environment and Conversation
TRU	Transuranic
TSCA	Toxic Substance Control Act
TSCAI	Toxic Substance Control Act Incinerator
UEFPC	Upper East Fork Poplar Creek
UF_6	Uranium Fluoride
WAC	Waste Acceptance Criteria
WIPP	Waste Isolation Pilot Plant
WM	Waste Management

C.8 Administration of Pension and Benefit Services at Portsmouth and Paducah Sites

Scope:

The Contractor will provide administration of the Multiple Employer Pension Plan (MEPP) and the Multiple Employer Welfare Arrangement (MEWA) at Paducah and Portsmouth for the eligible employees of the four DOE prime contractors involving environmental remediation and infrastructure services in accordance with the terms and conditions of Appendix H to this contract. The services will be provided for a period not to exceed December 31, 2011.

Duration:

The four Prime Contractors will become plan co-sponsors within 90 days of award of their contracts. DOE will identify the entity that will assume responsibility for these services no later than December 31, 2011.

Requirements:

The Contractor will comply with all applicable regulations, orders, and contract requirements unless expressly directed otherwise by the Contracting Officer.

PART I – THE SCHEDULE

SECTION D – PACKAGING AND MARKING

RESERVED

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PART I - THE SCHEDULE

SECTION E - INSPECTION AND ACCEPTANCE

E-1. 52.246-5 Inspection of Services - Cost-Reimbursement. (APR 1984)

(a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

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PART I - THE SCHEDULE

SECTION F - DELIVERIES OR PERFORMANCE

F-1. Term of Contract
The term of this contract is from December 18, 1997 through December 31, 2011.

F-2. Principal Place of Performance
The principal place of performance for the contract is Oak Ridge, Tennessee.

F-3. 52.242-15 Stop-Work Order. (AUG 1989) -- Alternate I (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of up to 30 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of up to 30 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

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

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

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

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

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

F-4. Contract Closeout

By March 1, 2010, the Contractor shall submit a separate plan including budget and schedule for closeout of the contract. The Contract Closeout Plan shall include all remaining administrative matters necessary to close out the contract, including but not limited to: resolution of remaining and open litigation; audit of indirect costs; remaining records disposition required by the Government; property disposition; ongoing monitoring and stewardship costs; costs for subcontract closeout; employment related matters such as workers' compensation, whistleblower actions, Energy Employees Occupation Illness Compensation Program Act or any other activities required for closeout.

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SECTION G - CONTRACT ADMINISTRATION DATA

G-1. Contracting Officer's Representative(s) (MAR 1989)

The Contracting Officer's Representative(s) (CORs) will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. The CORs are not authorized to change any of the terms and conditions of this contract. Changes to the Statement of Work will be made only by the Contracting Officer by properly written modification(s) to the contract. Additional Contracting Officer's Representative(s) for other purposes as required may be designated in writing by the Contracting Officer.

G-2. Contract Administration (MAR 1989)

The contract will be administered by:

U. S. Department of Energy
Oak Ridge Operations
Procurement and Contracts Division
ATTN: Contracting Officer
Post Office Box 2001
Oak Ridge, Tennessee 37831-8756

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

G-3. Modification Authority (APR 1984)

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

(a) Accept nonconforming work,

(b) Waive any requirement of this contract, or

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

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

H-1 Project Systems And Reporting Requirements

H-1.1 Project Control Systems

(a) In the performance of this contract, the Contractor shall maintain and use its approved project control system to accurately reflect the project status relative to cost and schedule performance, and tracks changes to the baseline. This system shall be fully integrated with the financial accounting and budget execution systems to ensure consistent reporting of available funding and costs. The project control system must also meet the requirements of the following DOE guidance:

(1) DOE Order 430.1B, Real Property Asset Management, February 8, 2008;
(2) Integrated Planning, Accountability, and Budgeting System – Information Systems (IPABS-IS) Data Requirements, August 28, 2006;
(3) Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 2000;
(4) Configuration Management and Change Control Process for the Environmental Management Program, December 28, 2006
(5) DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, July 28, 2006; and
(6) DOE M Manual 413.1, Attachment 1, Management Control Program, March 28, 2003.

(b) The DOE COR or designated representatives will conduct a compliance review of the Contractor's project control system to determine if the description and procedures meet the intent of this contract clause. (The compliance review of the Contractor's project control system has been completed: the description and procedures meet the intent of this contract clause).

H-1.2 Oak Ridge Environmental Management Project (OREMP) Baseline

(a) The Contractor shall maintain the baseline in accordance with DOE Order 413.3A and include all of the scope of work identified in the Statement of Work (SOW). Additionally, the Contractor shall maintain the ORO EM Life Cycle Baseline (LCB) and ensure the integration of the OREMP baseline into the LCB.

(b) The Work Breakdown Structure (WBS) shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract. The WBS levels should jointly represent the Project Baseline Summary (PBS) level.

(c) Cost estimates shall be integrated with the WBS and use estimating methodologies that are consistent with DOE Order 413.3A. The project control system must maintain capability to provide Total Estimated Cost (TEC), Total Project Cost (TPC), Estimates-to-Complete (ETC), Estimates-at Completion (EAC) along with tracking of cost and schedules.

(d) Schedules shall be developed that integrate with the WBS. Once defined, any external interdependencies with the project should be identified. Certain non-project level of effort work scope may be excluded at the discretion of the Contracting Officer. Each PBS will have assigned duration that will be based on work scope. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. The project schedule shall clearly depict critical path activities and milestones. Activities shall be resource loaded at the lowest practical level of the WBS, but at a maximum at least one level below the PBS to develop time-phased budgets that are integrated with the schedule. Float analysis will be summarized at the PBS and total project levels.

(f) The Contractor shall analyze DOE proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline along with potential impacts to the estimated cost established in Section B and schedule incentives.

(g) Any Contractor requested changes or DOE directed changes shall be addressed through the established change control process detailed in Section H.1.4.

(h) Prior to the release of funds for each fiscal year, DOE will analyze the baseline versus annual funding for that fiscal year. Each year the DOE will provide an estimate of any budget restrictions or specific technical or schedule guidance for the upcoming fiscal years through the remainder of the project. The Contractor shall then prepare a project performance forecast for all upcoming fiscal years from the approved project baseline taking the budget and technical restrictions into consideration. This forecast will include a comparison of previously planned work activities versus proposed planned activities for the remaining fiscal years, proposed changes to the Estimated Cost, and proposed changes to schedule incentives. The Contractor shall identify the differences in the scope within 60 days. Once the differences are verified, the Contracting Officer will issue a change order and request that the Contractor submit both technical and cost proposals. The technical and cost proposal will be negotiated as a change order, and should be completed in a timely fashion. Subject to the availability of funds, DOE assumes

new funding in accordance with the profile below. FY 2007 carryover funding is available in addition to this funding assumed in the profile below. The purpose of this profile is to provide an agreed to basis from which the impacts of any funding shortfalls or surpluses can be negotiated, to include changes in Estimated Cost and changes in schedule incentives, when analyzing annual funding per this clause.

Contract Basis
(Dollars in Millions)

		FY 2008		FY 2009		FY 2010		FY 2011		First Quarter FY 2012
Total		$384.3		$328.2		$339.6		$326.0		$46.2

Note: Total above includes PBS 20 funding for the WSI contract.

(i) The Contractor shall provide variance justification for differences between planned and actual performance against the total project baseline and the schedule incentives. Performance analysis techniques shall be commercially accepted and documented, and shall utilize earned-value methods and shall be reported to DOE at the PBS level. Performance metrics (i.e., quantities) are preferred for all technical work scope unless otherwise approved by the Contracting Officer. For monthly, annual and/or cumulative variances greater than ±10%, the analysis shall detail the causes for variance, impact on other PBSs and corrective action required.

(j) The EAC for the project shall be evaluated quarterly to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.

(k) All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance occurs (pursuant to DOE accounting regulations and Cost Accounting Standards) is measured and recorded. Any indirect costs shall also be collected and appropriately allocated to the PBSs.

(l) Costs shall be collected at a charge number level and be able to be summed through the WBS, PBS and by major contractor functional organization. Mischarges on time cards or other administrative or accounting errors shall be corrected in a timely manner.

(m) A Risk Management Plan shall be maintained that identifies the various internal risks to achieving the project baseline. The Risk Management Plan will analyze possible alternatives to mitigate impacts and provide for routine reporting and periodic updating of the Plan at least annually.

H-1.3 Project Reporting

(a) The Contractor shall submit monthly status reports on each PBS and the total project in a format approved by the COR. At a minimum, the status shall include cost and schedule variance at a suitable WBS level with rollup to the PBS, the status of major milestones, and critical technical or programmatic issues.

(b) Semi-Annual Critical Analysis (SACA). Twice each year the Contractor shall prepare and submit a comprehensive report which critically analyzes the overall status of the project as well as any key metrics. This report shall include overall narrative summaries, analysis of schedule trends and projects float, critical path performance, analysis of critical manpower skills or other resources, actual versus planned budget and cost figures, and project risk and contingency plan updates. The Contractor's format being used for monthly Project Performance Review is approved and meets the requirement of this clause.

(c) Plans and reports shall be prepared in such a manner as to provide for consistency with the contract Statement of Work, the project baseline, the approved Work Breakdown Structure, and correlation of data among the various plans and reports. The Contractor's reporting system shall be able to provide for the following at the subproject and PBS level:

1) Timely incorporation of contractual changes affecting estimated cost and schedule;

2) Reconciliation of estimated costs for those elements of the WBS with current performance measurement budgets in terms of changes to the authorized work and internal replanning

3) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments;

4) Revisions to the Contract's estimated costs for Government-directed changes to the contractual effort.

(d) The Contractor shall provide the Contracting Officer, or Contracting Officers Representative, access to any and all information and documents comprising the Contractor's project control and reporting system.

(e) The Contractor shall include graded reporting requirements in all subcontracts adequate to fairly evaluate performance and support the Contractor reporting requirements.

H-1.4 Baseline Change Management

(a) The OREMP Baseline is the source document(s) for all project control and project baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented.

(b) Provided that the baseline change does not affect the Total Contract Scope of Work, a PBS Annual or Lifecycle cost, a PBS Completion Date, Gold Chart metrics, FFA and enforceable agreement milestones, and PBS milestones, the Contractor may approve baseline changes, but should notify DOE in writing prior to making the change (excluding administrative changes).

(c) In circumstances where the Contractor's expenditures are projected to exceed authorized budget levels for a PBS, the CO, COR and DOE CFO organizations must be immediately informed. The CO will determine the appropriate resolution of the problem before a Baseline Change can be considered. The current year ETC Analysis shall track and manage changes in funding at each PBS level.

(d) Specific change control time frames for consideration and approval will be established by the Contracting Officer. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes, at any level, shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of Change Control Board records and Project Management records resides with DOE.

(e) Any changes to the estimated cost that affect fixed fee, or schedule incentives shall be executed only by a contract modification pursuant to the contract terms and conditions.

H-2. DOE Contract Administration and Oversight

(a) The OREMP presents significant work scope challenges to the Contractor, and makes it imperative that the DOE has a focused approach for providing oversight of Contractor work. This approach shall provide effective DOE oversight of project work, yet it must not present the Contractor with burdensome or "non-value added" work related distractions.

(b) The DOE oversight will be conducted in a tailored and proactive manner with minimal interference with project progress. The Contractor shall respond to DOE oversight and to concerns, findings and observations as

identified in writing by the CO or COR during the conduct of these oversight activities. The five fundamental areas of oversight are as follows:

1) Project Management Oversight: This includes daily field inspections and the monthly and quarterly assessment of project status, which will be used to determine and validate project performance.

2) Contract Management Oversight: Administration and monitoring of the prime contract will be in accordance with the contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.

3) Financial Management Oversight: The DOE will review all budgetary data submitted by the Contractor to be provided into IPABS. The DOE will review the status of all designated Oak Ridge management commitments. The DOE will monitor and audit Contractor funds management practices and procedures to ensure compliance with applicable regulations and statutes.

4) Daily Oversight: The DOE Facility Representatives, Project Managers and Subject Matter Experts will conduct daily oversight. The purpose of these contacts will be to assess compliance with the terms and conditions of the contract. In addition to this daily involvement, the Contractor shall support:

   (i) Senior management walk-throughs, conducted in scheduled areas of the plant or locations where significant work is ongoing.

   (ii) Specific tours of buildings just prior to demolition, or potential release sites that have been deemed as response actions.

   (iii) Periodic walk-throughs by the regulators, Defense Nuclear Facilities Safety Board (DNFSB), or DOE Headquarters personnel.

   (iv) Employee concerns elevated to the DOE for evaluation.

5) Scheduled Assessments: The DOE will publish a three-year schedule of assessments. Adjustments will be made no fewer than 14 days prior to any planned assessment (with the exception of a "For Cause" review). Specific assessment details will be provided 14 days in advance to the involved organizations. Assessment reports will be formally transmitted to the Contractor for development of a corrective action plan, if required. The DOE will verify and validate the Contractor's effectiveness in correcting the root cause problem of the concerns and findings.

(c) The COR for giving technical direction is listed below. The Contractor shall use the COR designated as the primary point of contact on technical matters subject to the restrictions of clause entitled "Technical Direction" in Section H.

Stephen McCracken, Assistant Manager for Environmental Management

The individuals listed below are delegated with limited COR authority as identified.

Donna Perez, Alternate Contracting Officer's Representative
Laura O. Wilkerson, Alternate Contracting Officer's Representative
Wendy Bryant, Contracting Officer's Representative-Legal matters

Amy Rothrock, Freedom of Information Act, Privacy Act

Future revisions of the COR may be accomplished by written notification from the CO to the Contractor, without a formal contract modification.

H-3. Technical Direction

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

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

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

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

(4) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

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

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

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

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

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

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

(c) All technical directions shall be issued in writing by the COR.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:

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

(2) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or

(3) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.

(e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes" in Section I.

H-4. Government Furnished Services and Items (GFS&I)

The DOE and the Contractor recognize that implementation of the SOW in an optimized fashion is dependent upon many activities, including the GFS&I identified below. Within thirty (30) calendar days after the effective date of the contract and by September 1 prior to each fiscal year end, the Contractor shall provide the CO a projection of its needed Government Furnished Services and Items (GFSI), identified in table below. The Contractor shall also provide quarterly updates to this projection, if changes occur, to the CO. Amendments to the projection, if any, shall be provided to the CO 45 calendar days in advance of the GFSI need date. DOE will review each Contractor submittal of GFSI needs and, within 15 calendar days, shall notify the Contractor whether it will provide the requested GFSI. If DOE will not provide the GFSI as requested by the Contractor, DOE will identify when it can provide the requested GFSI within 30 calendar days of the request. If DOE cannot provide the request for GFSI within the time periods listed in the table below, the Contractor may be entitled to pursue remedies in the manner and subject to the limitations set out in subparagraphs (b) and (h) of the clause entitled "FAR 52.245-1 Government Property (June 2007)" in Section I.

GFS&I	REQUIREMENT *
CERCLA Document Approvals, Pre-ROD	In accordance with FFA protocol
CERCLA Document Approvals, Post-ROD	In accordance with the Accelerated Closure Plan June 2002 Regulator Agreement.
Receiver site for DUF_6 Cylinders	The Department will identify the approved receiver site(s) for DUF6 cylinders to meet the Contractor's critical path schedule for removal and transportation of cylinders relative to accomplishing closure of ETTP. (Complete).
Security Clearances	DOE shall promptly process Contractor security clearances in accordance with DOE O 472.1c. On average, processing time will be as follows: "L" – 120 days; "Q" – 150 days. Processing time begins upon receipt of a properly filled out case from the Contractor as required by DOE O 472.1c.
RFP and Subcontract Approvals for Actions within ORO Threshold	7 business days to provide comments. Once comments satisfactorily addressed by the Contractor, 3 business days to approve
RFP and Subcontract Approvals for Actions above ORO Threshold	12 business days to provide comments. Once comments satisfactorily addressed by the Contractor, 8 business days to approve
TRU Overpacks	As required with proper advance notification (Complete).
Approval of Safety Basis Documents	HAD – 30 cal. days New DSA/TSR (includes BIO, SAR, etc.) – 90 cal. days DSA/TSR and associated HADs for K25/K27 downgrading from Nuclear Category II to less than Nuclear Category 3 — 30 cal days** Annual Update of DSA – 45 cal. days (if new scope added, will be treated as new DSA) TSR/DSA Change Packages and JCO's – 45 cal. days (if very complex, 90 cal. days) Emergency Management Hazard Assessments – 45 cal. Days
Approval of permits, burn plans, historic preservation, NEPA documents	10 working days following any regulatory required review and approval timetables.
Offsite waste disposal at DOE controlled sites	Available when needed per the baseline schedule.
DOE Oversight of Contractor Work	Within 30 days of contract modification, DOE will provide to the Contractor a DOE Oversight Plan in accordance with clause H-2.
Utility Services	As required

* All time requirements for DOE approvals are contingent upon the document submitted by the Contractor for approval being complete, accurate, and adequate in content and quality.

**Subject to Contractor providing base approval documentation including all supporting analysis excluding Nuclear Criticality Incredibility analysis at least 60 days prior to desired approval. The 30 days for approval will be from the time an approvable analysis for Nuclear Criticality Incredibility is submitted to DOE in support of the base safety basis documents.

H-5. Withdrawal of Work

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

(b) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide transition support as required. Notwithstanding the clause entitled "Obligation of Funds" in Section I, the Contracting Officer may unilaterally deobligate funding associated with any such withdrawal of work.

H-6. Conditional Payment of Fee – Environment, Safety, and Health and Safeguarding Restricted Data and Other Classified Information and Materials

The Contracting Officer may apply appropriate fee deductions after the fact to subsequent fee payments, provided such fee adjustments are identified in writing to the Contractor within six (6) months of date of the event or incident occurrence or within six (6) months of the determination of a significant adverse safety trend or pattern demonstrating a breakdown in basic management systems for safety or security. This clause is in addition to any other remedies available to the Government that may be contained in this contract.

The Contracting Officer shall apply only a single fee deduction for each separate event even if a single event may qualify for more than one fee deduction. However, fines and penalties imposed under the Price-Anderson Amendments Act (PAAA) or Worker Safety and Health Protection (10 CFR 851) are excepted from this provision. If an event or incident results in Price Anderson or 10 CFR 851 fines or penalties, the PAAA fines or 10 CFR 851or penalties will apply. If the applicable deduction is greater than the fine or penalty, the difference between the PAAA or 10 CFR 851 and the applicable deduction will be an adjustment to the fee payment. The Contracting Officer shall ensure that Contractor receives impartial fair and equitable treatment, as set forth in FAR 1.602-2.

(a) Environment, Safety, and Health – The Contractor shall maintain its approved Safety Management System in accordance with the provisions of the clause entitled "Integration of Environment, Safety and Health into Work Planning and Execution" in Section I. Cost and schedule impacts due to work delays resulting from Contractor safety management lapses or non-compliance with requirements will generally not be accepted as a basis for adjustment to the contract cost and schedule requirements. If the Contractor fails to meet the specified annual safety performance objectives, performance measures, and commitments as established to comply with the provisions of the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution" in Section I, the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce the annual fixed fee.

If, in the performance of this contract, there is a catastrophic event (such as a fatality, hazardous material exposure exceeding regulatory limits, an event that causes significant damage to the environment, or an event that causes grave damage to national security), the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce the annual fixed fee. In determining any diminution of fee resulting from a catastrophic event, the DOE Operations Office Manager or his/her designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating factors presented by the Contractor or other sources.

(b) Safeguards and Security – The payment of fee under this contract is dependent upon the Contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with law, regulation, and DOE directives, applicable to the safeguarding of Restricted Data and other classified information and incorporated into the contract in the Baseline List of Required Compliance Documents. In addition to other remedies available to the Federal Government, if the Contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data, other classified information, or classified materials, the DOE Operations Office Manager or his/her designee, at his/her sole discretion, may reduce the annual fixed fee. Any reduction in the amount of fee earned by the Contractor will be determined by the severity of the Contractor's failure to comply with contract terms and conditions. Most serious are performance failures that have been determined, in accordance with applicable DOE regulation or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security.

The Contractor is responsible for establishing and implementing processes and programs necessary to meet Safeguard and Security program requirements in the contract. The Contractor executes this responsibility by obtaining resources through other DOE prime contractors. The Contractor will not be assessed a fee penalty for DOE's security contractors' failures that are unrelated to implementing the Contractor's security program requirements, e.g., the accidental discharge of a weapon by an employee of the security contractor.

(c) Reserved

(d) In no case shall the total reduction exceed $1.5 million in a single fiscal year.

H-7. Price Anderson Amendments Act and Worker Safety and Health Program (10CFR851) Noncompliance

The Contractor shall establish an internal Price Anderson Amendments Act and Worker Safety and Health Program noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews

of the system. The Contractor shall also implement a Price Anderson Amendments Act and Worker Safety and Health Program reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H-8. Defense Nuclear Facility Safety Board

As directed by the Contracting Officer's Representative, the Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect contract work. Based on Contracting Officer's Representative direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H-9. Permits, Applications and Licenses

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

(b) In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor agrees to sign environmental permits and applications as "operator" or "co- operator" if deemed appropriate by DOE and the cognizant regulatory agency. To clarify the resulting obligations under the contract, the parties agree to the following:

(1) The Contractor is responsible for signing permit applications and obtaining all necessary environmental permits. The Contractor shall accept assignment of permits currently held by DOE and its existing prime contractors. DOE will co-sign Hazardous Waste and State Dangerous Waste permit applications as owner where required by applicable law.

(2) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

(3) The Contractor shall simultaneously submit all reports required by permits directly to the regulators and to DOE.

(c) In the event of termination or expiration of this contract, DOE will require the new contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor contractor or DOE.

H-10. Contractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties

(a) The Contractor shall accept, in its own name, services of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of costs associated with fines and penalties shall be subject to the other provisions of this Contract.

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

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

H-11. Diversity

(a) The Contractor shall continue to maintain and implement a Diversity Program consistent with the DOE Diversity Strategic Plan.

(b) A Diversity Plan shall also be maintained that addresses the Contractor's approach to ensure an effective Diversity Program (addressing applicable Affirmative Action and Equal Employment Opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; (2) examples of planned initiatives and activities which demonstrate a commitment to a Diversity Program including recruitment strategies for hiring a diverse workforce; and (3) milestones to accomplish diversity initiatives. The Diversity Plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's workforce, (2) its subcontractors workforce, (3) conflict resolution, (4) educational outreach, (5) stakeholder involvement and outreach, (6) subcontracting with small,

small disadvantaged and women-owned small business, (7) minority educational institutions, and (8) environmental justice.

H-12. Corporate Home Office Expenses

No corporate home office expense of the Contractor shall be allowable under this contract without the prior approval of the Contracting Officer. However, work performed at the Contractor's own facilities in support of this contract, when authorized by the Contracting Officer, may be allowed to bear the allocable portion of allowable corporate G&A expense.

H-13. Costs Associated With Whistleblower Actions

(1) Definitions:

(a) Covered contractors and subcontractors mean those contractors and subcontractors with contracts exceeding $5,000,000.

(b) Employee whistleblower action means any action filed by an employee in Federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

(c) Retaliatory act means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

(d) Settlement and award costs means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

(2) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer:

(a) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(b) Must consult with the Office of General Counsel whistleblower costs point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and

(c) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

H-14. Separate Business Unit

The work performed by the Contractor under this contract shall be conducted by a separate business unit (division, segment, etc.) from its parent(s) company. The separate business unit must be set up solely to perform this contract and shall be totally responsible for all contract activities.

H-15. Guarantee of Performance

Since the Contractor is a separate business unit from its parent company, the Contractor's parent company shall guarantee performance as evidenced by the Guarantee of Performance contained in Section K. If the Contractor is a joint venture or other similar entity where more than one company is involved, the parent companies shall assume joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of Performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H-16. Responsible Corporate Official

Notwithstanding the provisions of the clause entitled "Guarantee of Performance" in Section H, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: David Walker
Position: President
Company: Bechtel National, Inc.

H-17. Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan

The "master" Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, submitted by Contractor consistent with the provisions of the clause entitled, "Small Business Subcontracting Plan (Apr 2008)" in Section I, and approved by the Contracting Officer on September 26, 2003, is incorporated in and made a material part of this contract as Appendix C. Prior to the beginning of each fiscal year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals as described in paragraph (d)(1) and (2) of the clause entitled "Small Business Subcontracting Plan (Apr 2008)" in Section I, to remain in effect for each fiscal year. The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated by reference as a material part of this contract.

H-18. Internal Audit

The Contractor agrees to conduct internal audits and examinations, satisfactory to DOE, of records, operations, expenses, and transactions with respect to costs claimed to be allowable under this contract. All audit reports, including supporting documentation, shall be submitted or made available to the Contracting Officer or his/her designee.

H-19. Allowable Cost

(a) The Government shall reimburse the Contractor for costs in amounts determined to be allowable in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR), as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulation (DEAR.)

(b) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be:

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

H-20. Representations, Certifications and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the Offeror, dated

August 29, 1997, for this contract are hereby incorporated, by reference, and made a part of this contract.

H-21. Financial Management and Integrated Accounting System

(a) The Contractor shall maintain and administer a financial management system that includes an integrated accounting system satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained.

(b) The integrated accounting system must be linked to DOE's accounts through the use of reciprocal accounts and have electronic capability to transmit monthly and year-end self-balancing trial balances to the DOE's Primary Accounting System.

H-22. Privacy Act Systems of Record

(a) The Contractor shall continue to operate the following systems of records on individuals to accomplish an agency function to which the requirements of The Privacy Act, 5 U.S.C. 552(a), are deemed applicable:

DOE SYSTEM NUMBER	TITLE
5	Personnel Records of Former Contractor Employees
33	Personnel Medical Records
35	Personnel Radiation Exposure Records

The Contractor shall perform this requirement in accordance with the clause of this contract entitled, "Privacy Act" in Section I. It is understood that compliance with the Privacy Act will require certain changes to the Contractor's current record keeping procedures.

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

H-23. Assignment of DOE Prime Contracts

During the period of performance of this contract it may become necessary for the DOE to transfer and assign to the Contractor existing or future DOE prime contracts supporting site work to this contract. The Contractor shall accept the assignment of these prime contracts. The Contractor will not be responsible for any cost, charges, penalty, liability or assessment under the assigned prime contract (including any assessments under the Conditional Payment of Fee clause) resulting from actions or inactions of the former prime contractor on the assigned contract. Details will be coordinated with the Contractor prior to the transfer.

H-24. Workforce Transition and Management

The Contractor shall adhere to the following requirements in its own, and subcontractor, human resources related actions.

(a) Transition to Subcontractors. The Contractor will maintain processes that address transition of the workforce from its staff to subcontractors, if a future transition action is necessary. In staffing non-management positions, subcontractors will give right of first refusal to incumbent employees who were performing essentially identical functions. The requirements contained in this clause take precedence over the clause entitled "Displaced Employee Hiring Preference" in Section I. For subsequent subcontractor to subcontractor transitions, the Contractor's Transition processes shall describe an approach that is consistent with its technical and subcontracting approach.

(b) Pay and Benefits. In order to minimize unnecessary disruption to the "grandfathered" workforce and minimize severance costs, "grandfathered" employees who transition to the first or second tier subcontractors will continue to retain substantially equivalent base pay and employee benefits, to include company service credit and the opportunity to continue to participate in the Multi Employer Pension Plan and companion retiree medical benefit.

(c) Multi Employer Pension Plan (MEPP). The Contractor will continue to be the sponsoring employer for the MEPP and will have the responsibility of administering the MEPP and maintaining its qualified status.

(d) Severance Pay. No severance pay is warranted on the date Contractor employees transition to the workforce transition subcontractors (or transition from subcontractor to subcontractor) since the transition occurs under substantially equivalent employment conditions. These employees will retain their severance pay benefit, if any, earned with the Contractor for assistance should they ever be involuntarily (except for cause) separated. Severance pay based on the length of service with the Contractor or subcontractor will be paid if an individual is subsequently involuntarily terminated (except for cause) by the Contractor, or by one of its subcontractors (to which the severance pay benefit has been transferred). Prorated repayment of severance pay will be required should an individual be subsequently employed under

substantially equivalent pay and benefits, including the Multi Employer Pension Plan, based upon the length of time between separation and new hire date.

(e) Labor Relations. The Contractor and its subcontractors will continue to maintain positive labor-management relations with the appropriate collective bargaining representatives on all sites where it performs surveillance, maintenance, construction, and demolition work.

(f) Employee Relations. The Contractor and its subcontractors are expected to maintain a positive employee relations environment that will foster high productivity at reasonable cost. The Contractor and its subcontractors shall implement effective employee concerns resolution programs.

H-25. Advance Understanding on Human Resource Costs

(a) The DOE will continue to maintain advance understandings (Appendix B) with the Contractor on certain human resource costs that will be reimbursed under this contract consistent with the provisions of the clause entitled "Allowable Cost" in Section H. These costs are those associated with human resource policies and systems on which the Contractor has reached agreement with DOE to apply to work under this contract. Any deviation from the advance understanding must be approved by DOE before such costs incurred will be considered allowable (either direct or indirect) under the subject contract. In addition, DOE approval is required for total annual reimbursed compensation paid to each person designated as Key Personnel in Appendix A, exclusive of any bonus or incentive compensation pay which, if paid by the Contractor, will be paid out of the Contractor's profit and not reimbursed under this contract. The Advance Understanding on Human Resource Costs is part of this contract and included in Appendix B.

(b) Agreement will also be reached regarding the Contractor's plan to assure human resource costs are reasonable for work performed by major cost type subcontractors.

(c) Relocation costs incurred with regard to relocating an employee to the work site are allowable in accordance with FAR 31.205-35, Relocation Costs, for this contract. However, the Contractor shall keep the number of employees relocated to a minimum. Unless otherwise agreed, exit relocation costs are not allowable.

H-26. Determination of Appropriate Labor Standards

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. Where requested by DOE, the Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations.

The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H-27. Application of Labor Policies and Practices

The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's programs at reasonable cost. Collective bargaining will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. Contractor management's trusteeship for working on DOE facilities and programs critical to the National interest includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.

H-28. Other Government Contractors.

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE contractor, the Contracting Officer shall so notify the Contractor and the Contractor shall comply with any instructions the Contracting Officer may provide.

H-29. Environmental Justice

The Contractor will embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on non-discrimination in its programs that affect human health and the environment. The Contractor will comply with Executive Order 12898 on Environmental Justice and ORO's Environmental Justice Strategic Plan.

H-30. Cost Recovery

If, at any time during the performance of the contract, the Contracting Officer disallows a cost(s) in accordance with FAR 42.8, the Contractor must repay the amount owed within 15 days of the Contracting Officer's written determination disallowing the cost(s). If the Contractor fails to repay the disallowed amount within the allotted time, the Contracting Officer may offset fee payments to recover the amount owed.

H-31. Department of Energy Pilot Mentor-Protégé Program

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Energy Pilot Mentor-Protégé Program, the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

H-32. Material Safety Data Sheet Availability

The Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used. The Contractor agrees to maintain an accurate inventory and history of use of hazardous materials at each use and storage location.

H-33. Protection of Government Property - Management of High-Risk Property and Classified Materials

The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody. In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management Regulations (41 CFR chapter 109), and other applicable regulations.

High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

H-34. Stop-Work and Shutdown Authorization

In the event of an imminent health and safety hazard, every employee has the right to stop work immediately, when they are convinced a situation exists which places an individual and/or the environment in imminent danger. Actions should subsequently be coordinated with the DOE Field Office Manager and Contractor management. The stop work order should be promptly confirmed in writing from/to the Contracting Officer.

In the event of a non-imminent health and safety hazard, any employee has the right to suspend work when they perceive a situation exists which places an individual and/or the environment in an unsafe situation. Actions should subsequently be coordinated with the DOE Field Office Manager and Contractor management. The suspension order should be promptly confirmed in writing from/to the Contracting Officer.

Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the Facility Safety Basis is a condition, situation or proposed activity which, if not terminated could cause, prevent mitigation of, or seriously increase the risk of (1) Nuclear Criticality, (2) Radiation Exposure, (3) Fire/Explosion, and/or (4) Toxic/Hazardous Chemical Exposure.

H-35. Government Property

(a) Only that property and data specifically included in the LIST OF GOVERNMENT PROPERTY, Part III--Section J - Appendix J to the contract, shall be furnished by the Government or acquired by the Contractor as a direct charge to this contract.

> The LIST OF GOVERNMENT PROPERTY shall be modified as appropriate to reflect any changes in the acquisition authorization.

(b) The Federal Acquisition Regulation (FAR Subpart 45.5) prescribes the Contractor recordkeeping and reporting requirements for Federal contracts. The FAR reporting requirements apply to plant equipment having an acquisition cost of $1,000 or more. In addition to these requirements, the Department of Energy requires the Contractor to use established DOE asset codes to identify Government property. The Contractor shall furnish an annual report, as of August 31 of each year for all Government property at subcontractor facilities. The report is due not later than 45 days after the end of the reporting period. The annual reporting requirement applies to capital equipment and real property acquired or disposed of during the period, by asset type. In addition, the annual report must include government-owned materials held in storage for issue when the balance on hand at the end of the reporting period amounts to $50,000 or more. In most cases, only the beginning and ending balance shall be indicated on the report.

(c) Contractor shall comply with DOE Acquisition Regulation (DEAR) Subpart 945.5.

H-36. Security

(a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and

protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The Contractor agrees to comply with all security and counterintelligence regulations and requirements of DOE incorporated by the clause entitled "Law, Regulations, and DOE Directives" in Section I.

(c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of restricted data. The term "Restricted Data" means all data concerning:

(1) design, manufacture, or utilization of atomic weapons;

(2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means:

(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

H-37. Regulatory Reviews and Approvals

The Department and the Contractor shall share responsibility for ensuring that all regulatory reviews and approvals required for execution of scope are successfully completed. While Department personnel shall retain primary responsibility for all direct interactions between DOE and regulatory personnel, the Contractor shall maximize the productivity of these interactions by ensuring that timely and high quality regulatory submittals are provided, and by ensuring that DOE personnel are fully informed on known regulatory requirements and commitments. The Contractor shall have primary responsibility for identifying and supporting all critical path regulatory approvals required for on schedule scope execution and shall include reasonable time in project schedules for the DOE staff to carry out their functions.

H-38. Alternate Dispute Resolution

The DOE and Contractor both recognize that methods for fair and efficient dispute resolution are essential to the successful contract completion. To facilitate the early resolution of disputes, the parties agree to the following alternative dispute resolution (ADR) provisions:

(a) Standing Neutral

The parties agree to jointly select a "standing neutral" to be available to help resolve disputes as soon as they arise. This can be an individual or a company with specific expertise in this area. If a neutral cannot be agreed upon, the DOE Office of Dispute Resolution will assist the parties in this selection.

(b) Early Resolution of Disputes

(1) The Government and Contractor shall use their best efforts to informally resolve any dispute, claim, question or disagreement, by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If an agreement cannot be reached through informal negotiations, then such disagreement shall be referred to the "standing neutral," pursuant to the procedures that are jointly developed.

(2) If the neutral offers a non-binding advisory opinion, it shall not be admissible in evidence to any subsequent proceeding. All costs incurred by the Contractor in connection with the "standing neutral" shall, if reasonable, be an allowable cost reimbursable under this contract.

(c) Formal Complaint

If the dispute has not been resolved through the "standing neutral" process, either party may request resolution under the Disputes Clause of the contract.

H-39. Environmental Management Waste Management Facility (EMWMF) Reserve Capacity

Upon contract completion, the Contractor shall ensure that there is adequate reserve capacity in accordance with the annual Capacity Assurance Remedial Action Report, remaining at the EMWMF site for disposal of waste resulting from remediation work included in the Oak Ridge EM Baseline approved on February 13, 2008.

H-40. RESERVED

H-41. Electronic Subcontracting Reporter System

The requirement for the submittal of paper versions of the Standard Form (SF) 294, Subcontracting Reports for Individual Contracts, and the SF 295, Summary

Subcontract Reports, as provided in FAR 52.219-9(j) is hereby deleted and is replaced with the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

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

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

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I.1 52.202-1 Definitions. (JUL 2004)

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

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

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

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

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

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

I.2 52.203-3 Gratuities. (APR 1984)

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

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

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

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

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

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

(2) In addition to any other damages provided by law, to exemplary damages of

not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

I.3 52.203-5 Covenant Against Contingent Fees. (APR 1984)

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

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

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

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

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

I.4 52.203-6 Restrictions on Subcontractor Sales to the Government. (SEP 2006)

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

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

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

I.5 52.203-7 Anti-Kickback Procedures. (JUL 1995)

(a) *Definitions.*

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

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

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

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

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

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

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

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

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

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

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

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

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

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

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

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

I.6 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (JAN 1997)

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

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

(2) Rescind the contract with respect to which -

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

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

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

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

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

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

I.7 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (JAN 1997)

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

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

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

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

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

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

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

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

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

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

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

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

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

I.8 52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (SEP 2007)

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

"Agency" means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

"Covered Federal action" means any of the following actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

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

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

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

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

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

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

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

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

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

"Recipient" includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

"State" means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this Contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be

unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees. (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern--

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

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

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

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

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

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

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

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

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure. (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

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

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

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made

specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts. (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $100,000.

I.9 52.204-4 Printed or Copied Double-Sided on Recycled Paper. (AUG 2000)

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

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

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

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

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

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

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

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as -

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

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

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

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

I.10 52.204-7 Central Contractor Registration. (APR 2008)

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

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion

of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

"Registered in the CCR database" means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) Via the Internet at http://fedgov.dnb.com/webform or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address. City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph

(g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at http://www.ccr.gov or by calling 1-888-227-2423, or 269-961-5757.

I.11 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (SEP 2006)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of $30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed $30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

(1) The name of the subcontractor.

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

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

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

I.12 52.215-2 Audit and Records - Negotiation. (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General* - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

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

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating -

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

I.13 52.215-8 Order of Precedence - Uniform Contract Format. (OCT 1997)

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

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

I.14 52.215-10 Price Reduction for Defective Cost or Pricing Data. (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because -

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

I.15 52.215-11 Price Reduction for Defective Cost or Pricing Data - Modifications. (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor

took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested: and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data: or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2): and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete,

inaccurate, or noncurrent.

I.16 52.215-12 Subcontractor Cost or Pricing Data. (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either -

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data - Modifications.

I.17 52.215-13 Subcontractor Cost or Pricing Data - Modifications. (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall -

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form

prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

I.18 52.215-15 Pension Adjustments and Asset Reversions. (OCT 2004)

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

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

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

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

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

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

I.19 52.215-17 Waiver of Facilities Capital Cost of Money. (OCT 1997)

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

I.20 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other

Than Pensions. (JUL 2005)

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

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

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

I.21 52.215-19 Notification of Ownership Changes. (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

(1) Maintain current, accurate, and complete inventory records of assets and their costs:

(2) Provide the ACO or designated representative ready access to the records upon request:

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules

based on the asset records maintained before each Contractor ownership change.

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

I.22 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications. (OCT 1997)

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

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

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If -

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

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

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

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*,

wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

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

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

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

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

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

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

I.23 52.216-8 Fixed Fee. (MAR 1997)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule: provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100.000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's

past performance related to the submission and settlement of final indirect cost rate proposals.

I.24 52.219-8 Utilization of Small Business Concerns. (MAY 2004)

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

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

(c) *Definitions*. As used in this contract -

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

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

(1) Means a small business concern -

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

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

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

"Small business concern" means a small business as defined pursuant to Section 3 of the Small

Business Act and relevant regulations promulgated pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

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

I.25 52.219-9 Small Business Subcontracting Plan. (APR 2008)

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

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

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

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

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

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

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

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

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

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of -

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

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

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

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

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

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

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

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

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

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

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

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

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

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

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

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

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

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors

(except small business concerns) that receive subcontracts in excess of $550,000 ($1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will -

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

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

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

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

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

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

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

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

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

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

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

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

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

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

(iv) Records of any outreach efforts to contact -

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizations.

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

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

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

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

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

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

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

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

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal

contained in the Contractor's subcontracting plan.

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

(1) The master plan has been approved;

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

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

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

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

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with -

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

or

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

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

(1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides--

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans--

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $550,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan--

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which

contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

I.26 52.219-16 Liquidated Damages - Subcontracting Plan. (JAN 1999)

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

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

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good

faith effort to comply with the subcontracting plan. the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

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

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

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

I.27 52.219-25 Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting. (APR 2008)

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

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

I.28 52.222-1 Notice to the Government of Labor Disputes. (FEB 1997)

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

I.29 52.222-3 Convict Labor. (JUN 2003)

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

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

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

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

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

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

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

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

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

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

I.30 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (JUL 2005)

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

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

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

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

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

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

I.31 52.222-6 Davis-Bacon Act. (JUL 2005)

(a) Definition.--Site of the work--(1) Means--

(i) The primary site of the work. The physical place or places where the

construction called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost.

Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for

fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

I.32 52.222-7 Withholding of Funds. (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or

any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

I.33 52.222-8 Payrolls and Basic Records. (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the -

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify -

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I.34 52.222-9 Apprentices and Trainees. (JUL 2005)

(a) Apprentices. (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed--

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training. Employer. and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program. even though not individually registered in the program. if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause. shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition. any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered. the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress. expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits. apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification. fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program. the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

I.35 52.222-10 Compliance with Copeland Act Requirements. (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

I.36 52.222-11 Subcontracts (Labor Standards). (JUL 2005)

(a) Definition. Construction, alteration or repair, as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation--

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled--

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act--Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination--Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

I.37 52.222-12 Contract Termination - Debarment. (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

I.38 52.222-13 Compliance with Davis-Bacon and Related Act Regulations. (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.39 52.222-14 Disputes Concerning Labor Standards. (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.40 52.222-15 Certification of Eligibility. (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I.41 52.222-21 Prohibition of Segregated Facilities. (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

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

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

I.42 52.222-26 Equal Opportunity (MAR 2007)

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

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

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

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

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

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

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

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

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

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

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

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

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

I.43 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006)

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

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

Executive and top management means any employee--

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

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

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

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

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

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

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

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

Special disabled veteran means--

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

(i) Rated at 30 percent or more; or

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

or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

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

Veteran of the Vietnam era means a person who--

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

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

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

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

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

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

(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of

Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

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

(2) The employment notices shall--

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

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

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

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

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

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

I.44 52.222-36 Affirmative Action for Workers with Disabilities. (JUN 1998)

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

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

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

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

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

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

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

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

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

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

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

(b) *Postings.* (1) The Contractor agrees to post employment notices stating -

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

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting

Officer.

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

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

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $10.000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.45 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006)

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

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

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

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

(b) The Contractor shall report the above items by completing the Form VETS100, entitled "Federal Contractor Veterans' Employment Report (VETS100 Report)".

(c) The Contractor shall submit VETS100 Reports no later than September 30 of each year beginning September 30, 1988.

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

(1) As of the end of any pay period between July 1 and August 31 of the year the

report is due: or the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that-

(1) The information is voluntarily provided:

(2) The information will be kept confidential;

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

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

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.46 52.222-41 Service Contract Act of 1965. (NOV 2007)

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

"Act" means the Service Contract Act of 1965 (41 U.S.C. 351, et seq.)

"Contractor" when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability*. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation*. (1) Each service employee employed in the performance of this

contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage

Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year,

the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or

subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act -

(A) Name and address and social security number:

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation:

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of

the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be

paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision -

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.47 52.222-42 Statement of Equivalent Rates for Federal Hires. (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only:

It is not a Wage Determination

Employee Class	Monetary Wage - Fringe Benefits
[ ]	[ ]

I.48 52.223-3 Hazardous Material Identification and Material Safety Data. (JAN 1997) Alternate I (July 1995)

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

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

MATERIAL

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

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

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

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

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

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

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

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

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

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

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

for these purposes.

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

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

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

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

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

I.49 52.223-5 Pollution Prevention and Right-to-Know Information. (AUG 2003)

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

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

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

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

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

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

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

I.50 52.223-6 Drug-Free Workplace. (MAY 2001)

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

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/Contractor that has no more than one employee including the offeror/Contractor.

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance

duration), or as soon as possible for contracts of less than 30 days performance duration -

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about -

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse

assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) though (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I.51 52.223-10 Waste Reduction Program. (AUG 2000)

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

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

I.52 52.223-11 Ozone-Depleting Substances. (MAY 2001)

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

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

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

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

Warning

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

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

I.53 52.223-12 Refrigeration Equipment and Air Conditioners. (MAY 1995)

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

I.54 52.223-14 Toxic Chemical Release Reporting. (AUG 2003)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

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

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry

Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt -

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall -

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall -

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

I.55 52.224-1 Privacy Act Notification. (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.56 52.224-2 Privacy Act. (APR 1984)

(a) The Contractor agrees to -

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies -

(i) The systems of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the

collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.57 52.225-1 Buy American Act - Supplies. (JUN 2003)

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means -

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for

public use.

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

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

(b) The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act - Certificate."

I.58 52.225-8 Duty-Free Entry. (FEB 2000)

(a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the -

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if -

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the -

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES GOVERNMENT, [*agency*], Duty-free entry to be claimed pursuant to Item No(s) [*from Tariff Schedules*], Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to -

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the -

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if -

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.

I.59 52.225-13 Restrictions on Certain Foreign Purchases. (FEB 2006)

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

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

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

I.60 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises. (JUN 2000)

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

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime Contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the -

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration

1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

I.61 52.227-3 Patent Indemnity. (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and

shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to -

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

I.62 52.227-16 Additional Data Requirements. (JUN 1987)

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data - General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data - General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data - General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

I.63 52.227-23 Rights to Proposal Data (Technical). (JUN 1987)

Except for data contained on pages [ ], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated [ ], upon which this contract is based.

I.64 52.230-2 Cost Accounting Standards. (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall -

(1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other

than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

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

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

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

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

I.65 52.230-6 Administration of Cost Accounting Standards. (MAR 2008)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

"Affected CAS-covered contract or subcontract" means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor--

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

"Cognizant Federal agency official (CFAO)" means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

"Desirable change" means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

"Fixed-price contracts and subcontracts" means--

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

"Flexibly-priced contracts and subcontracts" means--

(1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

"Noncompliance" means a failure in estimating, accumulating, or reporting costs to--

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

"Required change" means--

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards. modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

"Unilateral change" means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement. if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph. the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2. Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices: or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2: or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may

be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)--

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance: or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO--

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause:

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause:

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings: and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall--

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or

decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall--

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include--

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

(2) For unilateral changes--

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current

practice, the difference is decreased cost to the Government:

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes--

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to--

(i) Include only those affected CAS-covered contracts and subcontracts having--

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of

paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO

may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to--

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall--

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2,

FAR 52.230-3, or FAR 52.230-5. require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price. as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

I.66 52.232-9 Limitation on Withholding of Payments. (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed. the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time: *provided*, that this limitation shall not apply to -

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

I.67 RESERVED

I.68 52.232-18 Availability of Funds. (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

I.69 52.232-23 Assignment of Claims. (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I.70 52.233-1 Disputes. (JUL 2002) - Alternate I (DEC 1991)

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

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

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

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

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

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

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

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

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested

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

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

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

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

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

I.71 52.233-3 Protest after Award. (AUG 1996) Alternate I (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall

make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

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

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

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.72 52.237-2 Protection of Government Buildings, Equipment, and Vegetation. (APR 1984)

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

I.73 52.237-3 Continuity of Services. (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them.

The Contractor agrees to -

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

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

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

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

I.74 52.239-1 Privacy or Security Safeguards. (AUG 1996)

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

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

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

I.75 52.242-1 Notice of Intent to Disallow Costs. (APR 1984)

(a) Notwithstanding any other clause of this contract -

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

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

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

I.76 52.242-3 Penalties for Unallowable Costs. (MAY 2001)

(a) *Definition.* "Proposal," as used in this clause, means either -

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which -

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed -

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled: and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

I.77 52.242-13 Bankruptcy. (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.78 52.243-2 Changes - Cost-Reimbursement. (AUG 1987) - Alternate I (APR 1984)

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

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

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

(1) Estimated cost, delivery or completion schedule, or both;

(2) Amount of any fixed fee; and

(3) Other affected terms and shall modify the contract accordingly.

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

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

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

I.79 52.243-6 Change Order Accounting. (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

I.80 52.243-7 Notification of Changes. (APR 1984)

(a) *Definitions.* "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically Authorized Representative (SAR)," as used in this clause, means any person the

Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this paragraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within [ ] (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state -

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct:

(3) The identification of any documents and the substance of any oral communication involved in such conduct:

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including -

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change:

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the

maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within [ ] (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either -

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under paragraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made -

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer

shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

I.81 52.244-2 Subcontracts. (JUN 2007)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds -

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: [ ]

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c) or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting -

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

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

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

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

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

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c) or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [ ]

I.82 52.244-5 Competition in Subcontracting. (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may

award subcontracts under this contract on a noncompetitive basis to its protégés.

I.83 52.244-6 Subcontracts for Commercial Items. (MAR 2007)

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

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $550,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its

contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.84 52.245-1 Government Property. (JUN 2007)

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

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

"Cannibalize" means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

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

"Contractor inventory" means--

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

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

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

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

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

"Equipment" means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

"Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

"Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

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

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

"Plant equipment" as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

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

"Property" means all tangible property, both real and personal.

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

"Provide" means to furnish, as in Government-furnished property, or to acquire, as in

Contractor-acquired property.

"Real property" means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

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

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

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

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

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

(c) Use of Government property. The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.

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

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

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time--

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer

shall consider an equitable adjustment to the contract.

(e) Title to Government property. (1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Fixed-price contracts. (i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property)", are subject to the provisions of this clause.

(ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon--

(1) Issuance of the material for use in contract performance;

(2) Commencement of processing of the material or its use in contract performance; or

(3) Reimbursement of the cost of the material by the Government, whichever occurs first.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts. (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the

Contractor, shall pass to and vest in the Government upon--

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(i) (collectively referred to as "Government property)", are subject to the provisions of this clause.

(f) Contractor plans and systems. (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service.

(B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) Subcontractor control. (A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for

loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

(1) Date of incident (if known).

(2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).

(3) Quantity.

(4) Unique Item Identifier (if available).

(5) Accountable Contract number.

(6) A statement indicating current or future need.

(7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.

(8) All known interests in commingled property of which the Government property is a part.

(9) Cause and corrective action taken or to be taken to prevent recurrence.

(10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.

(11) Copies of all supporting documentation.

(12) Last known location.

(13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(vii) Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is--

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;

(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property. (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include

reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis. (1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.

(3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies --

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

(4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

(1) Scrap to which the Government has obtained title under paragraph (e) of this clause.

(i) Contractor with an approved scrap procedure.

(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that--

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(ii) Contractor without an approved scrap procedure. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) Predisposal requirements. (i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority--

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical:

(B) May purchase the property at the acquisition cost; or

(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) Inventory disposal schedules. (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify--

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract: and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for--

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (e.g., computers, computer

components, peripheral equipment, and related equipment);

(E) Precious metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may--

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(6) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) Storage. (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121\st\ day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(8) Disposition instructions. (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) Abandonment of Government property. (1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government--furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.85 52.246-25 Limitation of Liability - Services. (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that -

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

I.86 52.247-1 Commercial Bill of Lading Notations. (FEB 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No.[ ]. This may be confirmed by contacting [*Name and address of the contract administration office listed in the contract*].

I.87 RESERVED

I.88 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels. (FEB 2006) - Alternate II (FEB 2006)

(a) Except as provided in paragraph (e) of this clause,the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least

50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both -

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to--

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353): and

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are--

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment): or

(ii) Shipments in direct support of U.S. military--

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590

Phone: (202) 366-4610.

I.89 52.249-6 Termination (Cost-Reimbursement). (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or,

from time to time, in part, if -

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government -

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the

Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including -

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be

such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor -

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.90 52.249-14 Excusable Delays. (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.91 52.251-1 Government Supply Sources. (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply

sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.92 52.251-2 Interagency Fleet Management System Vehicles and Related Services. (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

I.93 52.253-1 Computer Generated Forms. (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.94 Reserved.

I.95 952.203-70 Whistleblower Protection for Contractor Employees. (DEC 2000)

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.96 952.204-2 Security. (MAY 2002)

(a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

(c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source

material.

(h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended. Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownership, Control or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

(4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For

purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

(5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.97 952.204-70 Classification/Declassification. (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be

based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.98 952.204-73 Facility Clearance. (MAY 2002)

Notices

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect

the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions.

(1) Foreign Interest means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) Foreign Ownership, Control, or Influence (FOCI) means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear

materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

Notice to Offerors--Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

(2) If publicly owned, the Contractor's most recent annual report, and its most

recent proxy statement for its annual meeting of stockholders have been attached: or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

I.99 952.204-75 Public Affairs. (DEC 2000)

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

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

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

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

(e) Unless prohibited by law, and in accordance with procedures defined by the

Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

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

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

I.100 952.208-7 Tagging of leased vehicles. (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.101 RESERVED

I.102 952.209-72 Organizational conflicts of interest. (JUN 1997)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product. (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see DEAR 9.507-2 and enter specific term) years after the completion of this

contract. Furthermore. unless so directed in writing by the Contracting Officer. the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract. the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions. the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer. in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the Contractor. in the performance of this contract. obtains access to information. such as Department plans, policies, reports. studies. financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a). or data which has not been released or otherwise made available to the public. the Contractor agrees that without prior written approval of the Contracting Officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition. the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974

(5 U.S.C. 552a). or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer. DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

I.103 952.215-70 Key Personnel. (DEC 2000)

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

such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

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

[Insert List of Key Personnel unless listed elsewhere in the contract]

I.104 952.217-70 Acquisition of real property. (APR 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.105 952.223-75 Preservation of individual occupational radiation exposure records. (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.106 952.224-70 Paperwork Reduction Act. (APR 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar

device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

I.107 952.226-74 Displaced employee hiring preference. (JUN 1997) (Deviation)

(a) Definition. Eligible employee means a current or former employee of a Contractor or subcontractor

(1) who has been employed at a Department of Energy Defense Nuclear Facility as defined in Section 3161 of the National Defense Authorization Act for FY 1993 (P.L. 102-484) and the Interim Planning Guidance for Contractor Work Force Restructuring (FEB 1996) or other applicable Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance").

(2) whose employment at such a Defense Nuclear Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination.

(3) who has also met the job attachment test as set forth in applicable Departmental Guidance, and

(4) who is qualified for a particular position with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the Departmental Guidance.

(b) The Contractor will assess the skills needed for the work to be performed under this contract and will provide to the DOE Job Opportunity Bulleting Board System all information relevant to the qualifications for all of the positions for which the Contractor has vacancies.

(c) Consistent with Interim Planning Guidance for Contractor Work Force Restructuring (FEB 1996) as supplemented by the appropriate site work force restructuring plan, the Contractor agrees that it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (defined as those above the first level of supervision) for work performed under this contract.

(d) The Contractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the Contractor and will take such training into account in assessing the qualifications of eligible employees.

(e) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.108 952.247-70 Foreign travel. (DEC 2000)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

I.109 952.250-70 Nuclear Hazards Indemnity Agreement (OCT 2005)

(a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) *Definitions.* The definitions set out in the Act shall apply to this clause.

(c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d)(1) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)(1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other

persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in

the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action:

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified:

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages:

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant:

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law:

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection: and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract

and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the Contractor is a not-for-profit Contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

I.110 952.251-70 Contractor employee travel discounts. (DEC 2000)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting

Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal Contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal Contractor employees.

(e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal Contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government Contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

I.111 970.5203-1 Management controls. (MAY 2006)

(a)(1) The Contractor shall be responsible for maintaining, as an integral part of its

organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed: efficient and effective operations are promoted including consideration of outsourcing of functions; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation: all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported: and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 970.5232-3, Accounts, records, and inspection.

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.112 RESERVED

I.113 970.5203-3 Contractor's organization. (DEC 2000)

(a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they

occur.

(b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

(d) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the Contracting Officer.

I.114 970.5204-1 Counterintelligence. (DEC 2000)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.115 970.5204-2 Laws, regulations, and DOE directives. (DEC 2000)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule: and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

I.116 970.5204-3 Access to and ownership of records. (JUL 2005)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause. The Contracting Officer shall identify which of the following categories of records will be included in the clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated
during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);

(3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial

information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related Contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The Contractor shall include the requirements of this clause in all

subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than $2 million (unless specifically waived by the Contracting Officer);

(2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.117 970.5208-1 Printing. (DEC 2000)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.118 RESERVED

I.119 970.5222-1 Collective Bargaining Agreements Management and Operating Contracts. (DEC 2000)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation

and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.120 970.5222-2 Overtime management. (DEC 2000)

(a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

(c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount):

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime:

(4) An evaluation of alternatives to the use of overtime: and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours:

(v) Total straight-time hours: and

(vi) Overtime hours as a percentage of straight-time hours.

I.121 970.5223-1 Integration of environment, safety, and health into work planning and execution. (DEC 2000)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this

clause at a minimum. Documentation of the System shall describe how the Contractor will:

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work:

(3) Develop and implement hazard controls:

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event

that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

I.122 970.5223-2 Affirmative procurement program. (MAR 2003)

(a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.

(b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.

(c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.

(d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management Contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management Contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management Contractor may include such quantities in its own report and

include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available:

(i) Competitively within a reasonable time:

(ii) At a reasonable price: or,

(iii) Within the performance requirements.

If reports are required of the subcontractor, such reports shall be submitted to the facility management Contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year. the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

(e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

I.123 970.5223-4 Workplace Substance Abuse Programs at DOE Sites. (DEC 2000)

(a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.124 RESERVED

I.125 970.5226-2 Workforce restructuring under section 3161 of the National Defense Authorization Act for fiscal year 1993. (DEC 2000)

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

I.126 970.5226-3 Community commitment. (DEC 2000)

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

I.127 970.5227-1 Rights in data-facilities. (DEC 2000)

(a) Definitions. (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material. (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such

authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting. (1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. - - - - with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable. nonexclusive. paid-up. license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract. provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government. such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. - - - -. It may not be used. reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

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

(2) Used. copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced:

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

(4) Modified, adapted, or combined with other computer software. provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice. provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing. if this computer software has been published under copyright. it is licensed to the Government, without disclosure prohibitions. with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. - - - - with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a R-mo/yr, may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I.128 970.5227-4 Authorization and Consent. (AUG 2002)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the Contracting Officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or

services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

I.129 970.5227-5 Notice and assistance regarding patent and copyright infringement. (DEC 2000)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

I.130 970.5227-6 Patent indemnity - subcontracts. (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.131 970.5227-7 Royalty information. (DEC 2000)

(a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor;

(2) Date of license agreement;

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(5) Percentage or dollar rate of royalty per unit;

(6) Unit price of contract item;

(7) Number of units; and

(8) Total dollar amount of royalties.

(b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

I.132 970.5227-8 Refund Of Royalites (AUG 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

(1) Name and address of licensor;

(2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

(3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;

(4) Percentage or dollar rate of royalty per unit;

(5) Unit price of contract item;

(6) Number of units;

(7) Total dollar amount of royalties; and

(8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c)The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

I.133 970.5227-11 Patent rights - management and operating contracts, for-profit Contractor, non-technology transfer. (DEC 2000)

(a) Definitions. (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) DOE patent waiver regulations means the Department of Energy patent waiver

regulations at 10 CFR Part 784.

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

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.

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

(7) Subject Invention means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights. (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up

license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject Invention Disclosures. (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) the contract number under which the subject invention was made;

(ii) the inventor(s) of the subject invention;

(iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) the date and identification of any publication, on sale or public use of the invention;

(v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to 35 U.S.C. 202(ii), related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) all sources of funding by Budget and Resources (B&R) code; and

(viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.

(4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

(6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.

(d) Minimum Rights of the Contractor. (1) Contractor License. (i) Request for a

Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.

(iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.

(2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign

country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) Examination of Records Relating to Inventions. (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) Subcontracts. (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

(3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.

(4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(g) Atomic Energy. (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.

(i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication

to the Contracting Officer.

(j) Reports. (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) Classified Inventions. (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or

contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(m) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

I.134 970.5228-1 Insurance-litigation and claims. (MAR 2002)

(a) The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) The Contractor shall give the Contracting Officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the Contracting Officer, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(d) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the Contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by Contractor managerial personnel's--

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the Contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the Contracting Officer challenges a specific cost or informs the Contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by Contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "Contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

(k) The Contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall-

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the

insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor's own expense, be associated with the Department representatives in any such claim or litigation.

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

I.135 970.5229-1 State and local taxes. (DEC 2000)

(a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall hold the Contractor harmless from penalties and interest

incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.136 970.5231-4 Preexisting conditions. (DEC 2000) - Alternate II (DEC 2000)

(a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on Insert date contract began. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to Insert date contract began, the Contractor shall be responsible in accordance with the terms and conditions of this contract.

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

(c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

I.137 970.5232-1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud. (DEC 2000)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the Contractor's request for advance, partial, or progress payment is based on fraud.

(b) The Contractor shall be afforded a reasonable opportunity to respond in writing.

I.138 970.5232-2 Payments and advances. (DEC 2000)

(a) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed

costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix D. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the Contractor with DOE's patent clearance requirements, and

(2) The furnishing by the Contractor of:

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, DEAR 970.5228-1, "Insurance-Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted,

(i) Any claim which the Government may have against the Contractor in connection with this contract, and

(ii) Deductions due under the terms of this contract, and not otherwise

recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

(j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

I.139 970.5232-3 Accounts, records, and inspection. (JUN 2007)

(a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in

accordance with the provisions of Clause - . Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause - , Access to and ownership of records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

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

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:

(i) The internal audit organization's placement within the Contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other Contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.

(2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the Contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and Contractor management systems described in the internal audit design.

(4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the Contractor's management controls suspect, or the Contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242-1, Penalties for unallowable costs; require a refund; reduce the Contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

I.140 970.5232-4 Obligation of funds. (DEC 2000)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is $4,497,822,684.41. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding

sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices-Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the 45 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the Contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor's fee then earned but not paid and any negotiated fixed amounts, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

I.141 970.5232-5 Liability with respect to cost accounting standards. (DEC 2000)

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

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

I.142 970.5232-6 Work for others funding authorization. (DEC 2000)

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

I.143 970.5232-7 Financial management system. (DEC 2000)

The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the Contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained.

The Contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The Contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the Contracting Officer, shall submit any such deviation to DOE for written approval before implementation.

I.144 Reserved.

I.145 970.5242-1 Penalties for unallowable costs. (DEC 2000)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that Contractor,

(i) was subject to a Contracting Officer's final decision and not appealed;

(ii) the Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is:

(1) expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when

(1) the Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) the amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) the Contractor demonstrates to the Contracting Officer's satisfaction that:

(i) it has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor's submission for settlement of costs; and

(ii) the unallowable costs subject to the penalty were inadvertently incorporated into the submission.

I.146 RESERVED

I.147 970.5244-1 Contractor purchasing system. (MAY 2006)

(a) General. The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.

(b) Acquisition of utility services. Utility services shall be acquired in accordance with

the requirements of 48 CFR 970.41.

(c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) Audit of Subcontractors. (1) The Contractor shall provide for:

(i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and

(ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the Contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from Contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).

(f) Bonds and Insurance. (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of $100,000. The Contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $100,000 a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as

obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than $25,000, but not greater than $100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The Contractor shall forward determinations of nonavailability of individual items to the DOE Contracting Officer for approval. Items in excess of $100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of nonavailability for individual items valued at $100,000 or less.

(h) Construction and Architect-Engineer Subcontracts. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest. (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The Contractor shall assure that the working relationships of the construction subcontractor and the

subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a Contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) Contractor-Subcontractor Relationship. The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.

(n) Reserved.

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:

(1) Motor vehicles-48 CFR 908.7101

(2) Aircraft-48 CFR 908.7102

(3) Security Cabinets-48 CFR 908.7106

(4) Alcohol-48 CFR 908.7107

(5) Helium-48 CFR 908.7108

(6) Fuels and packaged petroleum products-48 CFR 908.7109

(7) Coal-48 CFR 908.7110

(8) Arms and Ammunition-48 CFR 908.7111

(9) Heavy Water-48 CFR 908.7121(a)

(10) Precious Metals-48 CFR 908.7121(b)

(11) Lithium-48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped-41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702

(r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;

(2) when lease renewals are being considered; and

(3) at other times as circumstances warrant.

(s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) Strategic and Critical Materials. The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or

a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

(2) Foreign Travel clause prescribed in 48 CFR 952.247-70.

(3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).

(4) Service Contract Act clauses prescribed in 48 CFR 22.1006.

(5) State and local taxes clause prescribed in 48 CFR 970.2904-1.

(6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

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PART III

SECTION J – LIST OF DOCUMENTS. EXHIBITS AND OTHER ATTACHMENTS

APPENDIX A

KEY PERSONNEL

President and General Manager	Paul Divjak

PART III

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX B

ADVANCE UNDERSTANDING ON HUMAN RESOURCE COSTS

(Attached Hereto)

BECHTEL JACOBS COMPANY

(Oak Ridge Complex)

APPENDIX "B"

CONTRACT NO. DE-ACO5-98OR22700

Effective April 1, 1998

Accelerated Closure Contract Modifications
RA AC-28
Approved by DOE July 24, 2008

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1. INTRODUCTION

This Personnel Appendix sets forth the allowable cost by advanced understanding for the Contractor's human resource management policies and related expenses which have cost implications under the contract. This Appendix identifies those major cost areas deemed reasonable and allowable for reimbursement when incurred in the performance of the Contract work. This cost understanding is subject to all applicable provisions of the main contract.

To support accelerated closure, the Contractor shall select, manage, and direct its work force and apply its human resource policies in general conformity with its private operations and/or standard industrial practice insofar as they are not inconsistent with this Contract. The Contractor shall use effective management review procedures and internal controls to assure that the cost limitations set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request that this Personnel Appendix be revised, and the parties hereto agree to give consideration in good faith to any such request. Revisions to this Personnel Appendix shall be accomplished by executing Reimbursement Authorizations (DOE Form AD-36) as approved by the DOE Contracting Officer or designated representative. When revisions to this Personnel Appendix are agreed upon, revised pages will be issued reflecting such changes and will bear the effective date of such changes and the Reimbursement Authorization number in the upper right-hand corner of each page. The changes will be highlighted using "redline" featured or a similar word processing software feature.

This Appendix B is adopted for the exclusive benefit and convenience of the parties hereto, and nothing herein contained will be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. Accordingly, neither this Appendix B nor any part thereof, as amended or modified, will be deemed to constitute a contract between a party hereto and any employee of the contractor or to be consideration for, or an inducement or condition of, the employment of any person, or to afford the basis for any claim or right of action whatsoever against a party hereto by any employee of the contractor or other third party.

The Contractor is responsible for managing and controlling overall personnel costs. Nothing in this agreement precludes the government from making a future determination of unallowable costs based upon the test of reasonableness.

2. DEFINITIONS

Accelerated Closure Commitments are the commitments set forth in DOE's agreement in principle with the State of Tennessee to accelerate closure of environmental management activities in Oak Ridge.

Adjustment is a change in salary required to establish either internal or external equity.

Adjusted Rate, Adjusted Pay, or Adjusted Base Pay is the rate of pay per hour, per week, or per month, including any premium pay.

Average Rate The rate which is determined by dividing the weekly straight-time pay by the number of hours worked during the payroll week when an employee works at more than one basic rate or more than one shift differential rate during a payroll week.

Basic Earnings The amount obtained by multiplying the number of hours worked by the basic rate.

Basic Rate, Job Rate, or Basic Salary Rate of pay per hour, per week, or per month, exclusive of any premium, but including any cost of living allowances (COLAs) established in any bargaining unit agreements established for each job classification in accordance with the approved wage and salary schedules.

Basic Workweek A 40-hour workweek.

Change of Classification is the placement of an employee in a new classification due to reassignment without change in salary range.

Contractor Bechtel Jacobs Company

Corporation Bechtel Systems & Infrastructure, Inc. and Jacobs Engineering.

DOE The contracting officer or authorized representative of the contracting officer.

Demotion is the permanent placement of an employee in a lower-rated job classification.

Employee A person hired by and working for the Contractor.

Exempt (E) Employees Executive, administrative, and professional employees who are exempt from certain provisions of the Wage and Hour laws. They are in the Contractor's Salary Grades 28 - 32 and are not paid overtime.

Exempt Premium Overtime (EPO) Employees Executive, administrative, and professional employees who may not be exempt from certain provisions of the Wage and Hour laws. They are in Contractor's Salary Grades 21 - 24 and are paid overtime at one and one-half their regular rate for all hours worked in excess of 40 hours in a workweek.

2. DEFINITIONS (Cont.)

Exempt Straight Time (EST) Employees Executive, administrative, and professional employees who are exempt from certain provisions of the Wage and Hour laws. They are in Contractor's Salary Grades 25 - 27 and are paid overtime at their straight time rate for all hours in excess of 40 hours in a workweek, provided that all hours are scheduled and approved in advance.

Grandfathered Employees For purposes of all Contract Work, the definition of "contract" includes DE-AC05-98OR22700 and DE-AC05-03OR22980 (collectively "these Contracts") and shall mean individuals who meet both of the following conditions:

(A) The individual was either: (1) an employee of Lockheed Martin Energy Systems, Lockheed Martin Utility Services, or Lockheed Martin Energy Research (collectively, LM) on March 31, 1998; or (2) a Bargaining Unit member of the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO (PACE) (at the East Tennessee Technology Park) who was on the LM recall list on March 31, 1998; or (3) a Bargaining Unit member of the Atomic Trades and Labor Council (ATLC) (at the Oak Ridge National Laboratory or Y-12 Plant), or PACE (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who was either an LM Employee, United States Enrichment Corporation (USEC) Employee, or on the LM or USEC recall list on the date of the applicable Bargaining Unit Transition Agreement.

(B) The individual was either: (1) subsequently employed by the Contractor or its first-tier or second-tier Subcontractors for work under these Contracts prior to April 1, 2000; or (2) a USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who transitions directly to the Contractor or its first-tier or second-tier Subcontractors for work under these Contracts after March 31, 2000, and before January 1, 2001; or (3) a former USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who received an Involuntary Reduction in Force after March 31, 2000, and is subsequently hired by the Contractor or its first-tier or second-tier Subcontractors for work under these Contracts before January 1, 2001; or (4) covered by an applicable Bargaining Unit Transition Agreement (noted above) for which no employment deadline is specified.

A Grandfathered Employee who incurs a break in service of any length will continue to be a Grandfathered Employee upon re-employment by the Contractor or by any of its first-tier or second-tier Subcontractors under these Contracts; except, Grandfathered Employees whose employment with the Contractor, or any of its first-tier or second-tier Subcontractors, or any other DOE-ORO prime contractor, is terminated after December 31, 2000, for any reason other than an Involuntary Reduction in Force will forfeit their Grandfathered Employee status and will not be Grandfathered if re-employed by the Contractor or any of its first-tier or second-tier Subcontractors under these Contracts.

Incumbent Employee means a Grandfathered Employee who is performing M&I scope of work at the time of issuance of a Request for Proposal which results in a Subcontract, and is actively participating in the Bechtel Jacobs Company LLC Pension Plan for Grandfathered Employees, the Restated Retirement Program Plan for Employees of Martin Marietta Energy Systems, Inc. (Lockheed Martin Employees), or the Multi-Employer Pension Plan (MEPP).

MEPP means the Multi-Employer Pension Plan that the Contractor will administer for the benefit of Grandfathered Employees.

Merit Increase is an increase in the salary of an employee within the established rate range of the job classification, which is granted consistent with the salary plan.

2. DEFINITIONS (Cont.)

MEWA means the Multi-Employer Welfare Arrangement that the Contractor will administer for the benefit of Grandfathered Employees.

Nonexempt (NEX) Employees Employees who are covered under and are subject to the provisions of the Wage and Hour laws. They are on the weekly salaried or hourly payroll.

Overtime Pay Payment (in addition to straight time) for any hours worked in excess of 8 hours in a 24-hour period or 40 hours within a payroll week for hourly and nonexempt salaried employees (or as otherwise agreed in advance and based on a 40-hour payroll week); and when applicable, payment for required hours worked in excess of 40 hours within a payroll week for eligible exempt salaried employees.

Payroll Day The 24-hour period extending from midnight to midnight. Exception: Payroll day may vary from midnight to the established starting or ending time of the shift.

Payroll Week Seven consecutive days (168 hours) extending from midnight Sunday to midnight Sunday. Exception: Payroll week may vary from midnight to the established starting or ending time of the shift.

Premium Pay A payment in addition to straight time pay made for any reason other than overtime; for example, shift differential, week-end premium, etc.

Promotion is the permanent placement of an employee in a higher rated job classification due to an increase in the character or scope of his/her job assignment.

Reevaluation is a change of job level, up or down, through formal evaluation of an existing job.

Regular Employee is any full-time or part-time employee on the Contractor's payroll, not in a temporary status.

Regular Rate The straight-time rate at which the hours are worked, or the average rate for the week, whichever is greater.

Regularly Scheduled Shift The normal hours of working time in each payroll day established for each employee.

Right of First Refusal means that all non-management positions will be offered for assignment first to Incumbent Employees and will only be offered to other persons in the event that no qualified Incumbent Employee is available.

Severance Pay means the Bechtel Jacobs Company LLC Severance Plan for Grandfathered Employees adopted by the Contractor under the M&I Contract.

Straight-time Pay or Straight-time Earnings Amount obtained by multiplying the number of units of time worked by the straight-time rate per unit of time.

2. DEFINITIONS (Cont.)

Straight-time Rate The rate of pay per hour, per week, or per month obtained by adding the applicable shift differential rate to the basic rate for the job classification assigned at the time the work is performed.

Substantially Equivalent Pay and Benefits means that the complete package of employee pay and benefits offered to Incumbent Employees by Subcontractors is equivalent in the aggregate to that offered to Incumbent Employees by the Contractor, even though individual elements of the package may differ. For subcontracts involving Bargaining Unit Employees, pay and benefits for Bargaining Unit Employees are governed by the applicable Union Agreement(s).

Termination Quit, discharge, layoff, retirement, death and/or removal from the payroll because of disability (as distinguished from disability absence where the employee is not removed from the payroll).

3. PAY POLICIES

3.1 BARGAINING UNIT EMPLOYEE COMPENSATION

a. The terms and conditions set forth in collective bargaining agreements (CBAs) and modifications thereto and established practices thereunder between the Contractor and recognized bargaining agents for its employees assigned to work under this contract (which involve expenditure of funds) constitute the allowable costs for bargaining unit members' compensation and benefits for reimbursement by the DOE. The collective bargaining agreements, incorporated by reference, include those with the following bargaining agents:

- Oil, Chemical and Atomic Workers International Union AFL-CIO and its Local 3-288
- Atomic Trades and Labor Council, AFL-CIO and its Affiliated Unions including Local 480 of the IAM

b. Prior to the negotiation of a new and/or revised CBA, the Contractor will review its negotiation plan with DOE and obtain DOE approval of its cost parameters and/or subsequent changes thereto. Reasonable costs which arise from administration of or pursuant to CBAs shall constitute allowable costs. The specific approval of DOE shall be obtained in the case of unusual items. The contractor will provide to DOE copies of its CBAs as they are entered into or modified and will keep DOE informed as far in advance as practicable of significant labor developments which are potentially precedent setting, may involve high cost, or potential work stoppages.

3.2 NONREPRESENTED EMPLOYEE COMPENSATION

3.2.1 Policy/Objectives

The Contractor will implement a compensation program to attract, motivate, retain, and reward a competent work force to effectively accomplish the performance of work under the Contract at a reasonable cost to the government. The Contractor's compensation and incentive programs shall be designed and implemented to support accelerated closure. Professional compensation methodologies and best business practices will be used in the management of the compensation program. Compensation costs will be managed consistent with the Contractor's prevailing operating budget and budget forecast.

3.2.2 Salary Administration

The Contractor shall:

a. Implement a compensation system, with the following components:

(1) Market policy for exempt salary structures and base salaries which seek to match average salaries in the competitive market at the beginning of the calendar year.

(2) Market policy for nonexempt salary structures and base salaries which seek to match average salaries in the competitive market at the beginning of the calendar year.

3.2.2 Salary Administration (Cont.)

(3) A job evaluation system for establishing appropriate job worth hierarchy.

(4) A performance management system that supports a pay-for-performance compensation philosophy.

(5) System for developing a compensation plan.

(6) System for planning and controlling compensation expenditures and evaluating the effectiveness of the program.

(7) System for documenting job content.

(8) System for communicating the compensation program to employees and managers.

b. Obtain DOE approval prior to changing compensation system component numbers 1-5 above.

c. Obtain DOE approval on the salary surveys and survey participants used for market comparisons.

d. Develop a Salary Increase Plan (SIP) annually, if appropriate, for the expenditure of funds that is consistent with the company's market policy, ability to pay, accelerated closure goals, and relevant economic data. SIP merit program funding will be reasonable and will not exceed averaged and timely salary increase budget data collected from at least three of the following leading survey companies (William M. Mercer, World at Work, Watson Wyatt, or Hewitt Associates). SIP promotion and adjustment funding will not exceed .85% of appropriate base payroll for the end of the previous calendar year without DOE approval.

The SIP will include the following:

(1) Analysis of salary survey data and contractor's market position for salary structures and base pay levels. Comparison of average pay and salary range midpoints to market average pay for benchmark positions.

(2) Identification of needed funds by payroll groups expressed as a percentage of the appropriate base payroll for the end of the previous calendar year. All components will be identified therein, e.g., merit, promotion, adjustment, lump sum, etc.

Unexpended portions of the SIP for one salary year are not carried into the succeeding salary year. All pay actions granted under the SIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before the year end (commonly called recovery).

(3) The Contractor will evaluate major changes occurring in a given year, such as significant reduction in Contractor employment levels and adjust the SIP, if appropriate.

3.2.2 Salary Administration (Cont.)

(4) Assessment of Contractor's financial condition to determine affordability of increasing compensation costs.

(5) Communication materials and tools for supervisors to help them plan salary actions to manage base salary relationships and pay for performance.

(6) Submit an annual expenditure report, DOE-F3220.8, to include breakouts for merit, promotion, adjustments, lump sums, and structure movement for each payroll showing actual against planned amounts.

e. Assure no "catch up" occurs for monies saved as a result of the Secretary of Energy's 1994 salary freeze in accordance with DOE direction.

3.2.3 Approval Of Individual Compensation Actions

The Contractor will submit annually proposed individual salary actions for Key Personnel identified in Appendix A to the Bechtel Jacobs Company Management and Integration Contract for approval by DOE. Revisions or additions to this listing (e.g., new hires) must be approved by DOE.

3.2.4 Other Pay Provisions

a. Overtime

(1) The Contractor shall maintain adequate internal controls to ensure that employees' overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.

(2) The Contractor shall notify the Contracting Officer when, in any given year, it is likely that overtime usage, as a percentage of payroll, may exceed 4 percent.

b. Other Supplements

(1) Accelerated Closure Compensation and Incentives. To retain the vital skills necessary to meet DOE's accelerated closure commitments, the Contractor may continue to utilize the Variable Pay Program which is currently a component of the Salary Increase Planning fund for exempt and non-exempt employees. The funding percentages for future Variable Pay Programs may not exceed the currently approved percentages of .85% and .7%, for exempt and non-exempt employees respectively, without obtaining prior approval from DOE. The funding level will be based on the appropriate base payrolls for the end of the previous calendar year. The Contractor's Variable Pay Program will provide an appropriate "line of sight" to the DOE mission at all levels. The initiation of any additional variable pay programs requires CO approval.

3.2.4 Other Pay Provisions (Cont.)

(2) Pay practices, in addition to FLSA requirements, may apply to Nonexempt employees in the following instances. Payment amounts will not exceed the maximum allowable specified for the same pay practices contained in collective bargaining agreements.

Call-in Allowance	Report for Work – No Notification
Holiday Pay	Saturday and Sunday Shift Premium
Meal Allowances	Shift Differential
EMT Premium	Licensing Payments

(3) Saturday and Sunday Work. An exempt salaried employee who works on Saturday as a part of the regular schedule may receive an additional twenty-five cents per hour for such work, unless such work is part of an extended work week.

An exempt salaried employee who works on Sunday as part of the regular schedule may receive an additional fifty cents per hour for such work, unless such work is part of an extended work week.

These payments may not be included in earnings when calculating the employee's participation in the various benefit plans.

(4) Meal Allowances. An exempt salaried employee may be paid a meal allowance to the maximum allowable consistent with bargaining unit agreements set forth in Section 3.1.

(5) EMT Premium. An exempt salaried employee who is required by the company to carry the EMT Medical Technician Certification may be paid a premium consistent with that paid under bargaining unit agreements listed in Section 3.1.

(6) Licensing Payments. Where required to perform specific jobs in nuclear reactor operations related positions, a licensing payment for nuclear reactor controllers and related licensed positions is an allowable cost as long as the total compensation remains reasonable as supported by market data. Licensing payments discontinue upon failure to receive the required periodic relicensing.

c. Salaried Employees - Part-Time Employment

Part-time employees may be hired regardless of the salary ranges that are to be used. Compensation, determined by time actually worked, will be calculated on the same basis as for full time, salaried employees at a rate comparable to that paid to regular employees in similar assignments. All part-time employees are considered nonexempt for overtime purposes consistent with the Fair Labor Standards Act regardless of job classification.

3.2.4 Other Pay Provisions (Cont.)

Part-time employees may participate in the following plans and activities:

Company Service Credit	Pension Plan
Group Insurance	Safety Programs and Awards
Holiday Pay (if working)	Savings Plan
Jury Duty (scheduled workday)	Shift Differential
Layoff Allowance	Travel
Occupational Disability	Vacation Plan
Overtime Premium	Voting

From 2000, the part-time employee cost for group insurance premiums is the regular employee premium for each plan. Paid time off will be accrued based on the number of hours worked. Part-time employees are eligible to convert to full-time status when management deems the change to be in the best interest of work performance under the contract.

d. Shift Differentials - Exempt Employees

Exempt salaried employees assigned to shift work will receive shift differential as follows:

(1) Employees assigned to the standard rotating shift schedule may receive up to $65 a month.

(2) Employees assigned to the 4 p.m. to 12 midnight shift, or any variation of this shift, may be paid up to $60 per month.

(3) Employees assigned to the 12 midnight to 8 a.m. shift, or any variation of this shift, may be paid up to $110 a month.

(4) Employees assigned to a rotating shift other than the standard rotating shift will be paid a combination of the appropriate differentials based on the percent of time worked on each shift.

(5) Employees assigned to an irregular shift may be paid the differential for the shift on which more than 50 percent of the hours were worked. If time is equal, the highest rate may be used.

3.2.4 Other Pay Provisions (Cont.)

e. Holiday Pay

Hourly employees will be paid in accordance with collective bargaining agreements listed under paragraph 3.1 of this Appendix. Salaried employees working on scheduled holidays may be given holiday pay when schedules and contract requirements necessitate work to be scheduled on company observed holidays (which are listed under paragraph 4.2 of this Appendix). Holiday pay is paid at the rate of 2 1/2 times the employee's adjusted rate for Nonexempt (NEX) and Exempt Premium Overtime (EPO) employees and 2 times the employee's adjusted rate for Exempt Straight Time (EST) employees in grades 25-27.

3.3 SEVERANCE PAY

3.3.1 Severance Pay Benefit (Grandfathered Employees Only)

a. General

Severance pay is payable to an employee who has three months or more of Company Service Credit and who is laid off on account of lack of work unless the layoff is caused by a temporary suspension of work or the employee was hired for intermittent or casual work or as a temporary worker for a limited time or for a specific project.

If an employee is re-employed by the Contractor after having been paid a severance payment, Company Service Credit for any subsequent severance payment consideration shall start from the date of such reemployment. If any individuals are reemployed by the Contractor prior to the end of the period covered by the severance pay (e.g., received 20 weeks severance pay, but reemployed after 15 weeks), the difference must be refunded.

No severance pay is paid to employees who terminate their employment voluntarily, who are discharged, or who resign by Contractor request, except for:

(1) Medical reasons (i.e., those terminated due to Contractor determination of mental or physical inability to perform available work).

(2) Employees who transferred directly from the predecessor Contractor (Union Carbide Corporation, Nuclear Division) to work under this contract, and who were hired by the predecessor Contractor prior to January 1, 1966 (substitute January 1, 1967, for hourly production and maintenance (P&M) employees of the ORGDP), who are laid off at retirement age (early or normal) or who voluntarily elect retirement are paid a severance pay based on Company Service Credit with the predecessor Contractor through December 31, 1965 (substitute December 31, 1966, for hourly P&M employees of the ORGDP).

3.3.1 Severance Pay Benefit (Grandfathered Employees Only) (Cont.)

Any such employee eligible for this Special Benefit who transferred from the predecessor Contractor (Union Carbide Corporation, Nuclear Division) to one of its private sector operations and back to the contract work during the term of the previous Union Carbide contracts, retained eligibility for this benefit at retirement. No further service under this contract will be credited to any employee toward this Special Benefit. Any severance pay granted will be based on the employee's basic rate of pay at the time of termination.

(3) Voluntary Reduction in Force (VRIF) Programs: Situations wherein a reduction in force is necessary in an employee unit and an employee volunteers with Contractor consent to be laid off in the reduction in force in place of another person. All VRIF Programs require prior DOE approval.

b. Amount Of Severance Pay

Severance pay will be calculated on the basis of the employee's basic rate in effect at the time of layoff (including extended hours' pay. if any, but excluding all overtime premium or shift differential) and may be paid in accordance with the following schedules:

(1) Hourly Employees

Refer to the terms and conditions set forth in the applicable collective bargaining agreements listed in section 3.1.a of this Appendix for allowable costs.

(2) Salaried Employees

Company Service Credit	Severance Pay
Under 3 months	No pay
3 months and under 1 year completed	Same portion of 1/2 month's pay as months of service are of 12 months
1 year and under 3 years	1/2 month's pay
3 years and under 5 years	3/4 month's pay
5 years and under 7 years	1 month's pay
7 years and under 10 years	1 1/2 month's pay
10 years	2 month's pay
11 years	Same for 10 years, plus 1/4 month for each additional year of service

3.3.2. Layoff (Excludes Grandfathered Employees)

Non-Grandfathered Contractor employees who are laid off due to a reduction in workload, reorganizations, changes in job requirements, or failure to meet DOE site access requirements will receive at least four weeks advanced notice of layoff.

When circumstances do not allow for part or all of the advanced notice period to be given, equivalent weeks pay in lieu of notice up to a maximum of four weeks pay may be granted.

3.3.3 Replacement Employer

Severance pay benefits are not payable when an employee is employed by or receives an offer of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equivalent pay and benefits.

3.3.4 Holding Status

Holding Status is a non-pay status which may be offered to employees awaiting reassignment following completion of an assignment in lieu of layoff.

The benefits of Holding Status are two-fold.

- The Contractor retains the employee in a "ready-to-call-back-to-work" status for potential upcoming work.
- The employee's benefits; life insurance, medical, dental and special accident insurance, are paid for by the Contractor during this holding status period of time.

Rates will be based on coverage immediately preceding notification of holding status.

Holding Status may be authorized for up to three months by the senior manager responsible for releasing the employee.

If no assignment has been found the employee will be terminated on the last day of the holding status period, or earlier if the employee resigns or takes a full time job with another employer.

4. BENEFIT PROGRAMS & POLICIES

The employee benefit plans, and related cost, described in this section are approved by DOE for application to employees working on this Contract and are reimbursable. In addition, retirees of this Contractor or the predecessor Contractor have limited coverage of these benefits.

The benefit programs will be designed and administered to attract, retain and motivate competent and productive staff. The programs will be competitive with labor markets from which employees are recruited, cost-effective, and in compliance with applicable laws and regulations.

Refer to the terms and conditions set forth in applicable collective bargaining agreements listed in this Appendix B, Section 3.1.a, for allowable costs for hourly employees.

Contractor benefit programs will be designed and administered to attract, retain, and motivate competent and productive staff to support the DOE missions. In order to determine reasonableness of cost, the Contractor will:

a. Conduct a benefits value study (market assessment) every two years to evaluate the relative value of the overall benefits package.

b. DOE and the Contractor will mutually agree on the companies to be used in the benefits value study. DOE will receive a copy of the study.

c. The Contractor's net benefit value will be managed so as not to exceed the average net benefit value (from the benefits value study) with appropriate consideration for the financial health of the organization and the reasonableness of the total compensation package.

d. All changes to the Contractor's benefit programs will be approved by the DOE.

4.1 COMPANY SERVICE CREDIT

Company and Credited Service can be restored to employees in accordance with the Contractor's Company and Credited Service policies. Policies will be administered consistently in accordance with applicable laws and Corporate rules.

a. In order to facilitate the retention of certain critically skilled employees within the DOE management and operating, performance-based management, and environmental restoration and management systems, the Contractor may recognize (for the purpose of establishing appropriate paid time off benefits) prior service credit earned while employed in the DOE system provided all the required criteria in acquisition letter 94-19 is met. The Manager of Human Resources must approve any grant of "Paid Time Off".

b. When an individual is transferred to the service of the Contractor from the DOE or from one of its contractors because of the transfer of a function to the Contractor, such employees may be granted Company Service Credit for all of such previous DOE contract-related service provided that:

4.1 COMPANY SERVICE CREDIT (Cont.)

(1) the individual's service with the previous employer is essentially continuous with the time of transfer to the Contractor;

(2) the Company Service Credit thus allowed does not entitle the employee to buy back interest in employee benefits such as the Retirement Plan, but is limited to possible increased future benefits such as, but not limited to, vacations, non-occupational disability allowances, and layoff allowances; and

(3) in all other respect, the Company Service Credit will be allowed in accordance with the Contractor's Company Service Credit rules.

4.2 HOLIDAYS

The Contractor observes the following holidays during the calendar year.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Good Friday	Friday after Thanksgiving
Last Monday in May	Christmas Associated
Independence Day	Christmas
Independence Day Associated (or other day determined by the Contractor)	

4.3 SHORT-TERM DISABILITY PAY FOR SALARIED EMPLOYEES

Contractor's Disability Program provides first day coverage if employee is injured in a non-occupational accident or is hospitalized overnight. Coverage begins for other disabilities certified by a personal physician on the eighth calendar day and is retroactive to the first day of disability. Employees must use their Paid Time Off (PTO) to be paid for absences not covered by disability. The schedule of maximum salary continuation for short term disabilities is as follows:

Company Service Time	Duration of Salary Continuation
One month but less than two months	One month
Two months but less than three months	Two months
Three months but less than four months	Three months
Four months but less than five months	Four months
Five months but less than six months	Five months
Six or more months	Six months

During a disability certified by their personal physician, the following three (3) tiers of salary continuation, up to the amount of duration of salary continuation referenced above, will apply (excluding any use of PTO):

Tier	Benefit Payment
Tier 1	100% of pay for the first 42 calendar days (6 weeks) of continuous disability
Tier 2	80% of pay for the next 42 calendar days (6 weeks) of continuous disability
Tier 3	60% of pay for the remaining 98 calendar days (14 weeks) of continuous disability

Salary continuation for short-term disabilities will be on a per disability basis. Ordinarily, salary payments during short term disabilities will be made at the employee's adjusted rate. Any "loss-of-earnings" payments received, such as Worker's Compensation Benefits in cases of occupational disability, will offset the continued payments of salary under the short-term disability program.

4.4 PAID TIME OFF

The cost of salaried employee paid time off taken in accordance with the established Paid Time Off Policy is allowable.

Years of Service	Annual Accrual*
0 - 4 years	120 hours
5 - 9 years	160 hours
10 - 19 years	200 hours
20 + years	240 hours
* *	280 hours

* Includes vacation accrual plus 40 hours of annual accrual to provide for absences for non-occupational disabilities, personal leave and time off for religious observance.

** Grandfathered employees who had 15 or more years of company service on January 1, 1991, and who are located at the Portsmouth Site, will be entitled to accrue PTO at the rate of 280 hours per year upon reaching 25 years of company service. Grandfathered employees who had 15 or more years of company service on December 31, 1995, and who are located at the Oak Ridge or Paducah Sites will be entitled to accrue PTO at the rate of 280 hours per year upon reaching 30 years of company service.

Salaried employees working a reduced weekly schedule will accrue paid time off on a prorated basis. Employees will continue to accrue paid time off during all paid absences, and will not accrue paid time off while in any unpaid status.

Consistent with Corporate policy, in special circumstances such as extraordinary unreimbursable medical expense, expense of purchasing a primary residence, tuition payments/post secondary education expense, funeral expenses, etc., the employee may request pay in lieu of using paid time off. In these cases, the Manager of Human Resources may authorize a cash payment in lieu of paid time off. The cash payment in lieu of paid time off is an allowable cost.

The Manager of Human Resources has authority to change PTO entitlement by granting up to two weeks of additional PTO eligibility on an exception basis to select employees when, in the opinion of the Contractor, such an extraordinary entitlement is necessary to successfully hire and retain a senior, critical, or key employee. In such exceptional cases, individuals would be eligible for additional PTO each year as authorized by the Manager of Human Resources until their company service would deem them eligible for more PTO.

4.5 LEAVES OF ABSENCE

4.5.1 Leave Of Absence Without Pay

An employee may be granted a leave of absence without pay, of any duration, by the contractor provided the absence will not interfere with the Contractor's operations or create any conflict of interest. Continuation of benefits during leave of absence without pay will be administered according to the Contractor's Leave of Absence Policy.

4.5.1 Leave Of Absence Without Pay (cont.)

a. Granting of company service for the full period of the leave (not to exceed 3 years) and restoration of paid time off eligibility immediately upon return to work may be provided for employees who return to work from:

   (1) Leaves granted when it is in the Company's interest to make an employee's expertise or services available to DOE, another DOE contractor, another government agency, or to work-related agencies, such as the International Atomic Energy Agency (Vienna) or the Center Study of Communicable Diseases (Atlanta).

   (2) Entrepreneurial leaves granted to accelerate technology start up based on DOE developed technologies.

b. Continuation of company service credit and/or immediate restoration of paid time off upon return to work for any leave without pay, other than those listed above, requires prior DOE approval if the leave exceeds 180 days.

4.5.2 Paid Education/Sabbatical Leave

a. Salary continuation and benefit costs will be allowable for the granting of up to eight leaves company wide for the following purposes:

   (1) To obtain advanced terminal degrees in fields of study which, in the opinion of the Contractor, will further the DOE mission.

   (2) To teach or perform research at an accredited college, university, or research institute.

b. Maximum of eight leaves at any given time.

c. The leaves require approval by the organizational General Manager and Manager of Human Resources.

d. May be approved for a duration not to exceed 24 months.

e. If the employee does not return to active work after the approved leave period, the employee will be required to pay back the salary continuation and benefits costs received during the leave.

f. If the employee voluntarily leaves the Contractor's payroll prior to working three years after returning to active work, the employee will be required to pay back the salary continuation and benefit costs on a prorated schedule based on the amount of time they have been back on the Contractor's payroll.

g. No educational assistance, travel, or relocation expenses will be paid to employees on these leaves of absence with pay.

4.6 JURY DUTY

An employee who is called for jury duty may be protected against loss of pay for the period of time needed to fulfill the obligation.

Employees may be paid their adjusted rate of pay for the regular day. Hours paid for under this policy may count as hours worked by salaried and hourly employees in the calculation of overtime and/or premium pay.

4.7 DEATH BENEFITS - SALARIED EMPLOYEE PAYMENTS

In case of death of a salaried employee, salary payments will be continued for four weeks.

4.8 MILITARY SERVICE, TRAINING, AND EMERGENCY DUTY

Military service, training and emergency duty policies will be administered in accordance with applicable laws, Contractor policies and procedures.

An employee will be granted a leave and protection against loss of pay for required military training and emergency duty. Such payments are limited to a maximum of two weeks per year (or four weeks every two years) for training and one month per year for emergency duty at the employee's adjusted rate.

An employee also may be paid for absences from work when required to register or take a physical examination required for entry into the armed forces.

4.9 COMMUNITY SERVICE

4.9.1 Civil Leave

Employees holding elected federal, state or local government office may be permitted to utilize a reasonable period of working time with pay to carry out responsibilities which are required by the office and cannot be handled outside working hours.

4.9.2 Civil Defense/Emergency Preparedness Exercises

Employees who have volunteered and have been accepted by a local Civil Defense Organization to participate in community or national defense alert operations or in Civil Defense/Emergency Preparedness training may be excused from work for such participation without loss of pay for scheduled hours of work.

4.9.3 Election Officials

An employee who has been officially appointed to serve as an election officer, judge, or clerk may be excused from work without loss of pay for the period of time necessary to serve in such capacity.

4.9 Community Service (cont.)

4.9.4 Voting Time

Employees may be excused from work without loss of pay for the minimum time needed to vote in a national, state, country, or municipal election consistent with state laws.

4.10 GROUP INSURANCE PLANS

The Contractor will be reimbursed for all cost incurred in implementing, administering, and funding comprehensive group insurance plans. The features of these plans are set forth in policies and Summary Plan Descriptions, a current copy of which will be provided to DOE. These Plans will be administered consistently in accordance with Plan Documents, insurance contracts, applicable laws and fiduciary responsibilities. The Contractor will periodically review the Plans to assure plan designs represent good business practices regarding the incorporation of cost-containment features, and to assure the overall benefit package is reasonable from a total compensation perspective.

PLAN	CURRENT CONTRACTOR COST
Group Life Insurance	Active salaried employees, Grandfathered retirees under age 65 - 50% of full cost for basic life; optional life and dependent life – fully paid by employee
Medical Expense including Prescription Drug and Vision Plans	Active salaried employees - 80% of full cost Grandfathered retirees (with greater than 10 years' full-time service) - 75% of full cost
Major Medical Medicare Supplement Plan	Grandfathered retirees (with greater than 10 years' full-time service) - 50% of full cost
Dental Expense Assistance Plan	Active salaried employees - 80% of full cost Grandfathered retirees under 65 - 75% of full cost
Travel Insurance	100% of full cost
Special Accident Insurance Plan	None - fully paid by employee
Long-term Disability Plan	100% of full cost for replacement income - 60% of salary
Medical and Dependent Care Flexible Spending Accounts	Administrative Costs Only

4.10 Group Insurance Plans (cont.)

4.10.1 Benefits Program For Displaced Workers

a. The cost of medical plan coverage for Contractor employees who have separated from employment, excluding those terminated "for cause," will be reimbursable from the date of separation provided the employee was:

(1) on the employment rolls and voluntarily or involuntarily separated on or after October 23, 1992, as a result of the implementation of a work force restructuring plan requested by the Secretary of Energy; and

(2) eligible for medical insurance coverage under the Contractor's plan at the time of separation from employment; and

(3) not eligible for coverage under an employer's group health plan nor Medicare since the time of separation.

b. Retirees eligible for medical coverage under the Contractor's health plan will not be eligible for coverage under this Order.

c. Benefits for displaced workers contained in a Workforce Restructuring Plan, developed pursuant to the National Defense Authorization Act of 1993, are reimbursable to the extent that a specific description of each benefit with supporting information and detailed projected costs has been reviewed and approved in advance by DOE, for inclusion in the Plan.

4.11 PENSION AND SAVINGS PLANS

The Contractor will be reimbursed for all costs incurred in implementing, administering, and funding the Pension and 401(k) Savings Plans. They must be maintained as qualified plans under IRS regulations and only revisions which effect substantive changes or increased costs are subject to prior approval of DOE. The features of the Pension and 401(k) Savings Plans are set forth in plan descriptions, current copies of which will be provided to DOE. These plans will be administered consistently and in accordance with applicable laws, Internal Revenue Service Code, Plan Documents, and fiduciary responsibilities. The Contractor will periodically review the Plans to assure that the plan design meets Contractor objectives to provide income replacement value consistent with industry standards, and to assure the overall benefit package is reasonable and competitive from a total compensation perspective. The Contractor costs of these plans are included in the table on the bottom of this page.

The grandfathered employees who transition to the Contractor or its first or second tier subcontractors will retain substantially equivalent base pay and employee benefits, to include company service credit and the opportunity to participate in a Multiple Employer Pension Plan and companion retiree medical benefit. The Contractor and its first or second tier subcontractors are also responsible for providing substantially equivalent 401(k) Savings Plans and health & welfare programs for the grandfathered employees. The Contractor will provide oversight over its first or second tier subcontractors to insure that subcontractors comply with the substantially equivalent pay and benefits provisions.

4.11 PENSION AND SAVINGS PLANS (Cont.)

PENSION AND 401(k) SAVINGS PLANS (GRANDFATHERED EMPLOYEES ONLY)

PLAN	CONTRACTOR COST
Pension Plan	100% Contractor paid
401(k) Savings Plan	100% match up to 4% of pay.[1]

401(k) PLANS (NON-GRANDFATHERED EMPLOYEES ONLY)	
PLAN	**CONTRACTOR COST**
Trust Component	100% Contractor paid[2][1]
401(k) Component	100% match up to 4% of pay; an additional 1% contributed each pay period[1]

[1] Includes overtime pay and Incentive Compensation payments.
[2] Trust payments will be consistent with Corporate-wide payments to employees, not to exceed 6%. Non-grandfathered, union employees will receive 5.8% of pay in the Trust per the collective bargaining agreement.

4.11.1 Reports

The Contractor will submit copies of actuarial valuation reports (prepared by the Contractor's actuarial consultants), a copy of IRS Form 5500 with schedules as submitted to IRS, and other financial or accounting reports developed or required in connection with the DOE reimbursed Pension and Retirement Plans.

4.11.2 Non-Qualified Pension Plans

Non-qualified Pension Plans implemented solely to replace the reductions in the Pension Plan benefit due to limitations imposed by Sections 415 and 401(a) 17 of the Internal Revenue Code are reimbursable under this contract. These plans will provide employees with benefits provided under the formulae expressed in the Contractor's Pension Plan and does not provide any additional benefit absent the Internal Revenue Code limitations. These benefits will be funded on a pay-as-you-go basis.

4.11.3 Incentive Compensation

a. The inclusion of Incentive Compensation (IC) in pensionable earnings is an allowable cost with the following restrictions:

(1) Only the two Grandfathered employees who are participating in IC and were hired by the Contractor on April 1, 1998, will be covered by this clause, and the normal cost to the Pension Plan will not exceed $19,000 per year in 2002 dollars.

(2) Bechtel Jacobs Company will not exceed either the dollar amount or number of employees covered without prior written approval of the Contracting Officer or his designee.

4.11.3 Incentive Compensation (Cont.)

(3) Performance awards annually approved in the Salary Increase Plan (SIP) are not covered by these restrictions.

(4) Performance awards (i.e. non-base, lump-sum merit increase, variable pay) paid by first- or second-tier subcontractors to grandfathered employees, not to exceed 10 percent of the employee's annual base pay, are not covered by these restrictions.

b. To minimize discrimination testing costs and to replicate Corporate plan provisions, the inclusion of Incentive Compensation in the definition of compensation for the 401(k) Plan is an allowable cost with the following restrictions:

(1) From 1999, the annual cost of including Incentive Compensation in the Trust and Savings Plan will not exceed .007 percent of the salary of the eligible non-grandfathered employees on December 31 of the preceding year.

(2) The Contractor will not exceed the percentage above without prior written approval of the Contracting Officer or his designee.

(3) Performance awards annually included in the SIP fund are not covered by these restrictions.

4.11.4 Contract Termination/Expiration

The Contractor shall not terminate any benefit plan without DOE approval. All costs for claims arising from defined benefit plans and post-retirement life, medical and other benefit liabilities for active and retired employees are obligations of the government. It is the intention of the DOE not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the contract. At the termination or expiration of this Contract, the Contractor's obligations to employees and retirees for these plans shall be relieved and indemnified by the government as described below:

a. Defined Benefit Plans

(1) If the contract terminates or expires and there is a replacement contractor, all assets and liabilities shall transfer to the replacement contractor, and the Contractor shall be relieved of, and indemnified by the DOE against, any and all liabilities arising from such plans.

(2) If the contract terminates or expires and there is no replacement contractor, the plan shall be terminated in accordance with the provisions of ERISA and the Internal Revenue Code (IRC) Annuity purchase bids will be solicited from a minimum of five of the ten largest insurance companies whose AM Best rating is A+ and who are currently quoting pension plan termination annuities. After all obligations for all liabilities (as defined in IRC 1.414(1)) of these defined benefit plans have been fully funded, as well as any related tax liability of the corporation, any remaining assets shall be returned to the DOE. If the assets are insufficient to cover pension obligations, DOE shall provide additional funding to cover such obligations.

4.11.4 Contract Termination/Expiration (Cont.)

(3) If the plan terminates before the contract terminates, the definition and disposition of assets and liabilities shall be as specified in paragraph (2).

(4) Under the scenarios described in paragraphs (1), (2), and (3), the Contractor shall actively manage all assets until the date of settlement. Such management shall include protection of principal if appropriate.

b. Defined Contribution Plan

Upon Contract termination, individual employee accounts in the defined contribution plan shall be handled in accordance with the provisions of ERISA. Any unallocated funds (e.g., suspense accounts) shall be returned to the DOE.

c. Post-Retirement Life And Medical, And Other Benefit Obligations

(1) If the Contract terminates and there is a replacement contractor, all assets and liabilities shall transfer to the replacement contractor, and the Contractor shall be relieved of, and indemnified by the DOE against, any and all further liabilities arising from such plans.

(2) If the Contract terminates and there is no replacement contractor, DOE will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this Contract related to Contracting Officer-approved employee welfare benefit plans (including but not limited to medical, life, and workers' compensation). If so requested by DOE at the time of contract termination or expiration, the Contractor will continue as the sponsor of these plans until all liabilities of such plans are discharged.

d. Taxes And IRS Penalties

If contractor action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the Contractor shall pay same from corporate funds.

If DOE action or inaction regarding plans approved by the Contracting Officer results in a tax or other IRS penalty, the Contractor shall pay same from the DOE funds.

4.12 EMPLOYEE ASSISTANCE PROGRAM

The Contractor will provide for an Employee Assistance Program (EAP) consistent with the Drug Free Workplace Act of 1988. This benefit will be administered in accordance with the contract between the Contractor and the EAP vendor. Periodic internal reviews will be conducted to assess cost/benefit of program delivery under current contract.

4.13 FUNERAL LEAVE

In the event of the death of a member of the employee's immediate family, a salaried employee may be granted leave with pay for up to four days.

4.14 WORKERS' COMPENSATION AND LEGACY PROGRAMS

The Contractor will provide workers' compensation benefits as required by applicable state laws. The Contractor will also administer and provide payments to eligible individuals described in the October 1, 2001, Memorandum of Understanding between DOE and the Contractor concerning legacy workers' compensation claims and will administer and provide payments for other DOE legacy programs.

4.15 WORKER HEALTH PROTECTION PROGRAM

Effective July 1, 2000, contractor employees will be allowed paid time off in order to participate in the early detection and prevention Worker Health Protection Program. Testing includes free medical screening consisting of a general physical examination, extensive blood work, hearing test, pulmonary test, chest x-ray, Beryllium LPT test, and other recommended testing. This also includes workers who are eligible for a Computerized Axial Tomography Scan (CT Scan) for early lung cancer detection.

5. EMPLOYEE PROGRAMS

5.1 EMPLOYEE DISPUTE RESOLUTION (EDR) PROGRAM

The Contractor will implement an EDR Program as the mandatory first step for resolving disputes by both the employee and the contractor to effectively accomplish the performance of work under the contract at a reasonable cost to DOE. The Contractor's costs associated with mediation and arbitration are allowable under the contract. The Contractor may provide financial assistance to employees who have contracted for legal services to assist them with their mediation or arbitration under the EDR Program. Contractor may provide, after a deductible of $100, 80% of the balance of legal fees to a maximum of $2500 per employee per year.

5.2 EDUCATION AND TRAINING

a. Cooperative Educational Program

The Contractor may provide temporary employment opportunities for students under the cooperative education and student intern programs. Cooperative education and student intern employees are not eligible to participate in the Educational Assistance Program.

b. Educational Assistance Program

The Contractor may provide financial assistance to eligible employees who engage in educational activities at an accredited institution in order to establish, maintain, or upgrade skills required by the Contractor. Eligible employees must satisfactorily complete courses of study to be eligible for assistance. Educational assistance may include payment for tuition, textbooks, and fees up to a maximum of $5,250 per employee per year. Payment may also be made for proficiency testing which results in the granting of academic credit or is otherwise required by the school.

The Contractor will submit to the DOE Contracting Officer by the last day of March and September of each year, the status and forecast of BJC employee participation in the Educational Assistance Program. Elements included in the status and forecast are as follows: list of BJC employees in the tuition reimbursement program, the degrees they are pursuing, the school involved, accreditation information, and an estimate of the cost. Estimates are based on the currently available course prices and subject to change at the discretion of the particular institution.

Regular work hours may be rescheduled to attend classes provided that there is no significant reduction in the employee's productive contribution caused by the rescheduling. Reduction of work schedules, with appropriate reduction of pay, and leaves of absence may be granted to facilitate course completion where deemed beneficial to pay for work under the Contract. Employees participating in the Educational Assistance Program may use facilities, equipment, and services in support of their studies if approved by management.

c. University Program Participation

The Contractor may permit a rescheduling of regular work hours or a reduction in the work schedule and corresponding reduction in pay for Contractor employees who are engaged in teaching, planning, or general management at local colleges or universities.

d. Training

The Contractor may conduct or permit employees to attend training programs and courses which are based on training needs assessments. These training courses should contribute to the performance of work under the contract and be provided at reasonable costs to the government.

e. Benefit Plans Participation

Employees working on a reduced workweek schedule under 5.1.b and c will be permitted to participate in all employee plans, based on their full regular salaries and the continuation of full Company Service Credit.

5.3 EMPLOYEE RECOGNITION

The costs of Contractor employee recognition programs are allowable based on a budget formula not to exceed 1/4 of 1% of Bechtel Jacobs and Bechtel Jacobs' Sub-Contractors base payroll on September 30 of the prior fiscal year. Program costs include the following:

- Company service awards for achieving service milestones consistent with the Corporate Service Awards Program.
- Safety awards and recognition to promote health and safety.
- Accelerated closure awards and recognition to promote commitment to DOE's accelerated closure commitments.
- Awards, recognition, and celebrations for participating in management initiatives, special achievements, retirement, and similar activities to the extent that they are reasonable and consistent with industry practice.

From 1999, Grandfathered employees who transition to workforce transition subcontractors will participate in a separately-funded, Contractor-managed service recognition program at an average cost of $150 per employee, per year.

5.4 PATENT AWARDS

Cash awards of $500 may be made to each inventor (or each co-inventor) for each invention filed in the U.S. Patent and Trademark Office which benefits the objectives of the Contractor and DOE.

6. TRAVEL AND RELOCATION

a. The Contractor may pay transportation, lodging, meals, incidental, relocation and other expenses for employees or other persons required to travel or move in conjunction with the performance of work under this contract. Allowable costs for travel and relocation include actual and reasonable costs according to Public Law 103-355, (Federal Acquisition Streamlining Act of 1994), applicable provisions of the FAR and DEAR, the Federal Travel Regulations, the Internal Revenue Service auto allowance, and standard industry practice. The Contractor may deviate in specific instances where it is determined to be economically advantageous to the DOE and to the extent such deviations conform to pertinent regulations and law. The Contractor will maintain records based on its determinations to deviate in specific instances sufficient for audit review.

b. When the Contractor requires employees to work at domestic locations of significant distance from their regular assignment location or in a foreign country, on a temporary or permanent basis, compensation may include allowances to address the incremental increase in the cost of living. The intent is to keep employee's compensation and standards of living reasonably whole so that they suffer neither a significant financial loss nor gain because of the assignment.

c. Relocation costs are those costs incident to (1) the permanent change of duty station of an existing employee and (2) the recruitment of a new employee.

d. Reasonable and necessary expenses incurred in the recruitment of personnel consistent with applicable provisions of the DEAR and FAR and standard industry practice are reimbursable.

7. MISCELLANEOUS POLICIES

7.1 PARTICIPATION IN ASSOCIATION ACTIVITIES

Cost incurred as a result of participation in the activities of technical, professional, and business methods associations will be allowed, as long as reasonable and necessary for the performance of effective work under the contract.

7.2 LICENSES AND FEES

The costs of required licenses, fees, and similar costs to certify and maintain employee qualifications to perform work under the contract are allowable. The Contractor requires Engineers and Scientists in certain job classifications to obtain professional licenses, certificates and/or registrations to formally practice their trade. The Contractor reimburses employees for certain costs associated with the initial registration upon passing the required exam and becoming registered. These include tuition for one Contractor approved exam preparatory course, course book costs, special examination fees, registration fee, stamp and initial exam time if scheduled during normal work hours. Other expenses are not reimbursed.

Salaried Engineers and Scientists in salary grades 28 and below and all Technical Specialists will be reimbursed for actual receipted expenses associated with license maintenance fees. Employees who do not meet the professional qualifications requirements, or do not keep their professional registration current, will not be reimbursed said fees.

The Contractor will closely manage and control the number of licenses/fees to limit reimbursed costs to provide a sufficient number of qualified employees to reasonably perform the affected work under the contract.

7.3 PERSONNEL BORROWED

Consistent with Section H-12 in the Prime Contract, the cost associated with Corporation and other non-Corporation employees not working for Bechtel Jacobs Company, borrowed for work under this contract or to support accelerated closure is reimbursable. Reimbursement for the time such employees work under this contract will be allowable in accordance with the home operating unit's disclosed costing practices. Time worked under this contract will include the time spent by employees en route to and returning from the site of work. Travel cost of such borrowed personnel will be allowed on the same basis as for employees working on the contract.

7.4 PERSONNEL LOANED

The Contractor may loan, at no cost to the government, individuals working under this contract to other operations as long as it does not interfere with the performance of contract work and accelerated closure goals. Each loan arrangement will be reviewed to assure no conflict of interest exists and must be approved by the general manager. A cumulative report showing all employees loaned, along with the total days loaned and services provided, will be submitted to the DOE annually.

7.5 PERSONNEL SUPPORT ACTIVITIES

The Contractor will be reimbursed for costs for activities incidental to the promotion of morale, welfare, health, and safety of employees, such as employee publications; health and first aid clinics; net costs of in-plant food services (operated on a break-even basis); employees time to promote employee participation in Blood Drives, U.S. Savings Bonds and United Fund campaigns; and other similar activities which may be sanctioned by the Contractor.

7.6 PROTECTIVE CLOTHING

Employees who are required or allowed to wear special clothing, shoes, and protective equipment for various reasons such as safety, housekeeping, protection from harmful chemicals or radioactive contamination, guard exercise clothing, etc., are furnished such items at no cost to the employees. Cost of providing and laundering of such special clothing are allowable costs. Safety glasses or goggles and safety shoes other than those furnished by the Contractor (one pair of which may be sold to any employee once every two years at $8 less than cost per pair in an attempt to prevent off-the-job lost-time accidents) are also allowable costs.

7.7 SECURITY SUSPENSION PAY

a. If the access authorization of an employee is suspended by direction of the Manager, Oak Ridge Operations Office, the Contractor shall transfer the employee to perform work not requiring access if such work is available. If a determination is made by the Contractor that no work is available in an uncleared area to which the employee may be transferred, the Contractor shall prepare a written report for the review and concurrence of DOE, setting forth the reasons for the determination. Subject to DOE's concurrence with such determination, the Contractor shall place the employee on leave with pay at the employee's current base compensation until the employee is notified in writing of the Hearing Officer's recommendation. If the Hearing Officer recommends revocation of access authorization, the employee shall be placed on leave without pay. If the Hearing Officer recommends continuation of access authorization, payment of the base wage shall be continued until final disposition of the case under Department procedures, 10 CFR Part 710.

b. In the event the employee whose access authorization has been suspended is transferred to another position where such access authorization is not required, compensation shall, thereafter, be the base wage or salary received by the employee on the position from which transferred, and such compensation shall continue until the employee is notified in writing of the Hearing Officer's determination. If the Hearing Officer recommends revocation of access authorization, compensation will be adjusted to the rate applicable to the job being performed.

   If the Hearing Officer recommends continuation of access authorization, the base wage previously received shall be continued until final disposition of the case under Departmental procedures, 10 CFR Part 710.

c. If at any stage of the access authorization procedure following a suspension, the employee's access authorization is reinstated and the employee returns to work in the same or comparable position, the employee shall be reimbursed for net loss of base earnings during the period of suspension.

7.8 BUSINESS EXPENSES

The following expenses, to the extent reasonable and which contribute to the effectiveness of the Contractor's work under the contract, will be allowable:

a. Booklets and pamphlets describing the capabilities of the Contractor, e.g., operational, financial, personnel, etc.

b. Cost of meetings, including cost associated with activities such as labor negotiations, recruiting, etc.

c. The cost of business meals is allowable to the extent reasonable and necessary for the effective performance of contract work. The Contractor shall establish and maintain effective internal controls.

7.9 PROFESSIONAL SOCIETY MEMBERSHIP

Contractor may reimburse membership fees in professional societies or organizations for employees who hold a position of responsibility, such as an active membership of a standards, practices or codes committee, or an officership in a local section or national organization, or otherwise maintain membership for the direct benefit of the Contractor and the DOE.

The costs of organization and employee memberships in trade, business, and technical organizations necessary for effective performance of work under the contract provided they are reasonable and do not constitute payments for, or in support of, partisan and political (lobbying) activity. The Contractor will closely manage and control the number of memberships necessary for the performance of effective work under the contract, and costs will not exceed $32,000 annually (includes $20,000 for Healthcare 21 Coalition) without DOE-ORO approval.

7.10 OVERSIGHT OF SUBCONTRACTORS

The Contractor and DOE recognize the substantive responsibility that the Contractor has to provide adequate oversight of its subcontractor's human resources (HR) management practices and to flow down to subcontractors applicable programs. The time spent for the contractor to provide adequate oversight of subcontractors in the following areas is an allowable cost: assuring a smooth workforce transition, assuring substantially equivalent pay and benefits where applicable, implementing the MEPP and other applicable employee benefits, assuring positive labor-management relations, assuring a diverse workforce, and assuring the existence of a viable employee concerns resolution program. In addition, reasonable costs necessary for effective implementation of these HR programs, benefits, and activities by each covered subcontractor, are allowable.

8. POST TRANSITION PERIOD WORKFORCE TRANSITION MANAGEMENT

Consistent with Section H-20 of the Prime Contract and the Contractor's approved Transition Plan, there resides with the Contractor the continued responsibility to ensure certain entitlements for the population of Transitioned and other Grandfathered employees beyond the defined Transition Period (3/31/98 – 3/31/00). The maintenance of these entitlements is recognized by the Contractor and DOE as a primary strategy for maintaining positive employee/labor relations and a highly productive work force. Reasonable costs associated with implementation and administration of benefit plans and other programs required to ensure these entitlements beyond the Transition Period are allowable.

a. Right of First Refusal will continue to be afforded to Incumbent employees who are affected by subcontracting new scopes of work and to Grandfathered employees impacted by subcontract re-competition.

b. Substantially Equivalent base Pay and Benefits will be provided to Incumbent employees whose transition from Bechtel Jacobs to a subcontractor, or from one subcontractor to another, is resultant from subcontract re-competition or subcontracting new scopes of work. Benefits will include eligibility for the MEPP and Severance Plan and either (1) Bechtel Jacobs MEWA and the M&I 401(k) Plan or (2) employee welfare benefits and 401(k) Plan judged substantially equivalent by Bechtel Jacobs at the time of transition.

c. Newly hired employees of Bechtel Jacobs and it's first- and second-tier subcontractors who are granted Grandfathered status, and rehired Grandfathered former employees, will be eligible for the Bechtel Jacobs MEWA, or will be provided benefits substantially equivalent to those provided other Grandfathered employees at the time of rehire. Since these hires will not involve Incumbent employees and may involve positions with responsibilities different from former positions, pay will be negotiated between the employee and the hiring company.

d. Incumbent employees and other Grandfathered employees who transition will continue their service uninterrupted for the MEPP, Severance Plan and Paid Time Off (PTO) Plan, consistent with plan provisions in effect at the time of transition.

e. Grandfathered former employees who are rehired, and newly hired employees granted Grandfathered status, will have prior eligible service credited for the MEPP, Severance Plan and PTO Plan, consistent with plan provisions in effect at the time of rehire.

f. Newly hired employees of Bechtel Jacobs or it's first- and second-tier subcontractors who are not Grandfathered and are not eligible for Grandfathered status will not be eligible for the MEWA, MEPP, or Severance Plan, but may be eligible for the commercial plans of their respective employers.

Eligibility for the various entitlements and plans is depicted in Figure 1 below.

FIGURE 1

POST TRANSITION PERIOD (4/1/98 – 3/31/00)
WORKFORCE TRANSITION MANAGEMENT [1, 2]

	ROFR	Pay	Health and Welfare Plans	MEPP	Severance	PTO
GF Incumbent Employees [3]	Yes	Same	MEWA or Substantially Equivalent	Continuous Service	Continuous Service	Continuous Service
New hire GF or GF Former Employees [4]	N/A	Negotiable	MEWA or Substantially Equivalent	Reinstated [5, 6]	Reinstated [5, 7]	Reinstated [5]
Non-GF New Hires	N/A	Negotiable	BJC Plans or Commercial Plans if Sub	No	No	No

(1) Does not include Portsmouth GDP turnover
(2) Employment and Benefits of bargaining unit employees governed by collective bargaining agreements
(3) Re-competition of existing WFT subcontract or award of new WFT subcontract
(4) Rehired by BJC or WFT subcontractor
(5) Those terminating employment after 12/31/00 for any reason other than RIF forfeit GF status and would be non-GF new hires if reemployed
(6) Former USEC where no pension assets were transferred have their pension benefit offset by the employee's eligible USEC pension benefit
(7) If former USEC previously paid severance, eligibility granted but service not reinstated and service date set to the date of hire. If former BJC or WFT Sub, service reinstated and future severance payment reduced by previous amount paid.

PART III

SECTION J - LIST OF DOCUMENTS, EXHIBITS
AND OTHER ATTACHMENTS

APPENDIX C

SMALL BUSINESS, SMALL DISADVANTAGED AND WOMEN-OWNED
SMALL BUSINESS SUBCONTRACTING PLAN

(See attached)

BECHTEL JACOBS COMPANY
OAK RIDGE ENVIRONMENTAL MANAGEMENT
ACCELERATED CLOSURE PROJECT

SUBCONTRACTING PLAN FOR UTILIZATION OF SMALL BUSINESS, SMALL DISADVANTAGED, WOMEN-OWNED HISTORICALLY UNDERUTILIZED BUSINESS ZONES, VETERAN-OWNED/SERVICE DIS-ABLED VETERAN OWNED SMALL BUSINESS SUBCONTRACTING PLAN

Name of Prime Contractor:	Bechtel Jacobs Company LLC
Address:	Hwy 58 P.O. Box 4699 Oak Ridge, TN 37831-4699
Telephone Number:	(865) 241-1288
Contract or Solicitation Number:	DE-AC05-98OR22700
Period of Performance:	October 1 , 2003 – September 30, 2008
Place of Performance:	Oak Ridge, Tennessee

A. Introduction

This subcontracting plan documents Bechtel Jacobs approach to involving small, small disadvantaged, women-owned, historically underutilized business zones, veteran-owned, and service-disabled veteran owned small business concerns (SB/SDB/WOSB/HUBZone/VO/SDVOSB) in the execution of the Accelerated Closure Project, hereinafter referred to as (ACP).

Bechtel Jacobs supports the Department of Energy's (DOE's) strong, long-term commitment to diversity. Bechtel Jacobs believes that diversity is much more than affirmative action in the workplace. It is a belief that, when transformed into action, provides an organization with comparative advantages over other organizations, both in the workplace and in the business community. For the Bechtel Jacobs' organizations, it is an operating principle of management, with which Bechtel Jacobs has demonstrated success. Diversity in subcontracting provides a vital link to the local community, strengthens the economy, creates new opportunities, is cost effective, and represents best business practice.

Bechtel Jacobs has a well-established record of involving small business concerns in meaningful roles both in government and commercial contracting. Building on this experience and success has resulted in the institutionalizing of diversity and SB/SDB/WOSB/HUBZone/VO/SDVOSB participation and development in project execution, while setting challenging and aggressive goals. Bechtel Jacobs will extend this approach to the ACP.

B. Statement of Policy and Commitment

In the execution of ACP, Bechtel Jacobs will comply with Public Law 95-507, FAR 52.219-8, 52.219-9, 52.219-16, and 52-219-29, all prime contract requirements, and current DOE policies and practices.

It is Bechtel Jacobs' policy to aggressively encourage the participation of SB/SDB/WOSB/HUBZone/VO/SDVOSB concerns, including the use of Historically Black Colleges and Universities, and Minority Institutions to the maximum extent practicable, consistent with efficient performance of the ACP. All procurements are subject to review for providing opportunities to include potential SB/SDB/WOSB/HUBZone/VO/SDVOSB suppliers and contractors, to develop good working relationships with them, and to encourage them to offer their products and services to the ACP.

(1) Small, Small Disadvantaged, Women-owned, Historically Underutilized Business Zones, Veteran-Owned and Service-Disabled Veteran Owned Small Business Concerns Participation

This plan is proposed to be effective for the period beginning October 1, 2003 – September 30, 2008. The SB/SDB/WOSB/HUBZone/VO/SDVOSB goals will be negotiated on an annual fiscal year basis. Revised goals will be based on fiscal year funding and scope. The plan will be updated annually based on the mutual agreement of the parties to the contract. In addition, other provisions or requirements of this plan may be negotiated and updated on an annual basis.

The following provides our small, small disadvantaged, women-owned, historically underutilized business zones, veteran-owned, and service-disabled veteran owned small business subcontracting plan as a percent of the total planned and available subcontracting effort. These goals will be negotiated on an annual basis.

(2) Potential Subcontract Opportunities for Small, Small Disadvantaged, and Women-Owned, HUBZone, Veteran-Owned/Service-Disabled Veteran Owned Small Businesses

The principal types of subcontracting opportunities that will be made available for SB/SDB/WOSB/HUBZone/VO/SDVOSB concerns consist of the categories listed in Table A. The categories shown are for general work categories only. As additional outsource opportunities are identified, the subcontracted efforts list will be expanded and the goal percentages will be revised accordingly. Opportunities, which are directed or for which there is only a single supplier are not considered available and are therefore not included in these goals.

(3) Method Used to Develop Subcontracting Goals

We established subcontracting goals based on the best available information for forecasting acquisitions and our commitment to execute the proposed Bechtel Jacobs' subcontracting strategy. The information was analyzed based on available ACP information, projected estimates, and potential requirements based on our experience in the environmental restoration industry. These goals are considered to be realistic and attainable.

Table A

Subcontracted Efforts	Small Business	Small Disadvantaged Business	Women-Owned Small Business
Site Landlord Services	X	X	X
Deactivation Services	X		
Remedial Investigation Services	X		
Remedial Action Services	X	X	X
Decontamination and Decommissioning Services	X	X	X
Demolition Services	X	X	X
Technical Support Services	X	X	X
Administrative Support Services	X	X	X
Public Relations Support Services	X	X	X
ES&H Support Services	X	X	X
Project Controls Support Services	X	X	X
Waste Management Services	X	X	X
Surveillance and Maintenance Services	X	X	X
Training Services	X	X	X
Architectural Services	X	X	X
Civil Survey Services	X		
Construction Services	X	X	X
Information Technology Services	X	X	X

(4) Methods Used to Identify Potential Sources for Solicitation

We continually identify and review all potential sources of supplies and services, which include, but are not limited to, the following:

- Bechtel Jacobs Company LLC Supplier DataBase.
- Bechtel Jacobs' proprietary Supplier Information System (SIS), which includes past performance data, and our Major Subcontractors' supplier and contractor source lists.
- Historical reports and data that show products and services obtained by from SB/SDB/WOSB/HUBZone/VO/SDVOSB concerns by other associate contractors at all

ACP sites.

- Various directories and source lists such as the following:

  - Tennessee Minority Supplier Development Council
  - Local US Small Business Administration listings
  - National Hispanic Association of Construction Engineers
  - Local and regional Building and Construction Trades Councils
  - Listing of Historically Black Colleges and Universities and Minority Institutions
  - The National Association of Minority Contractors (NAMC)
  - MBISYS - National Minority Supplier Development Council databases
  - Dun & Bradstreet Procurement Planning Directory for Small Business Products and Services
  - National Minority Business Directory - Try Us!
  - "Minority Business Development Agency - Directory of Regional & District Offices and Funded Organizations," published by US Minority Business Development Agency
  - "National Directory of Minority-Owned Business Information System," published by Business Research Service, Inc.
  - "Minority and Women-Owned Business Information System," published by Source Publications, Inc.
  - "Minority-Owned High Technology Business Directory, published by Business Research Services, Inc.
- Bechtel Jacobs' Small Business fairs and forums designed to attract additional, new sources.

(5) Indirect Costs

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

(6) Administrator of Subcontracting Plan

Freda H. Hopper, ACP Supplier Advocate Manager, is designated to administer this subcontracting plan. In the performance of her responsibilities under this plan, she will ensure that the following activities are managed in a timely and effective manner:

- Ensure source lists of potential SB/SDB/WOSB/HUBZone/VO/SDVOSB subcontractors for which the goals established herein are maintained.

- Seek out other SB/SDB/WOSB/HUBZone/VO/SDVOSB when the number of prospective sources is not adequate, through the use of mass media communication tools such as Internet bulletin board.

- Mentor existing small business concerns currently under subcontract, enhancing their ability to provide timely, cost-effective, and quality services.
- Advise and train project management personnel on the purposes of this plan and foster adequate support.

- Keep records describing performance against the goals established herein.

- Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, in accordance with the prime contract and instructions provided by the Contracting Officer.

- Verify that subcontracts issued contain the flow-down clauses pertaining to SB/SDB/WOSB/HUBZone/VO/SDVOSB concerns when required and maintain policies and procedures as required by the prime contract.
- Maintain liaison and a good working relationship with Small Business Administration representatives to obtain assistance and coordination in finding capable SB/SDB/WOSB/HUBZone/VO/SDVOSB.

- Maintain a close working relationship with DOE-OR to ensure Bechtel Jacobs' project objectives and activities are consistent with DOE-OR's program.

- Require lower-tier subcontractors to submit subcontracting plans pursuant to PL 95-507, and monitor for compliance with those plans.

- Make monthly reports to S. D. Liedle, Bechtel Jacobs Company President, and P. F. Clay, Bechtel Jacobs Company Vice President, concerning progress made toward achievement of goals under this program.

(7) Implementation

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

- Post on the internet 90-day "look ahead" schedules detailing SB/SDB/WOSB/HUBZone/VO/SDVOSB opportunities that are coming up.

- Package solicitations (including time for preparation, scope of work, quantities, specifications, and delivery schedules) to facilitate participation by SB/SDB/WOSB/HUBZone/VO/SDVOSBs in subcontracting opportunities and solicitation, bid, and proposal activities.

- Establish and maintain contacts with SB/SDB/WOSB/HUBZone/VO/SDVOSB trade associations and business development organizations.

- Conduct internal workshops, seminars, and training programs to ensure that internal customers and buyers are acquainted with Bechtel Jacobs's policy and prime contract requirements, and to ensure that externally, SB/SDB/WOSB/HUBZone/VO/SDVOSBs are familiar with requirements for doing business at the ACP sites.

- Maintain an effective outreach program by sponsoring and attending regional procurement conferences, trade fairs, and other functions where participation is expected to locate additional qualified sources.

- Implement an ongoing 'in-reach program that includes forums designed to give SB/SDB/WOSB/HUBZone/VO/SDVOSBs access and exposure to key people responsible for project planning and project management, and to provide them with

information and visibility to the ACP acquisition plan.

- Develop a comprehensive SB/SDB/WOSB/HUBZone/VO/SDVOSB project source list easily accessible to and utilized by individual buyers, which also includes past performance.

- Preselect and qualify SB/SDB/WOSB/HUBZone/VO/SDVOSB to perform specific scopes of work.

- Structure the program to help develop the capabilities and quality of services provided by SB/SDB/WOSB/HUBZone/VO/SDVOSB suppliers and subcontractors currently performing work on the site.

We will maximize participation of SB/SDB/WOSB/HUBZone/VO/SDVOSBs through set-asides for acquisitions of $100,000 or less when such participation is cost effective and results in on time, quality goods and services. Purchases of $10,000 or less may be awarded to SDB and WOSB concerns without securing competitive quotations. Assurances will be made that these awards are at fair market prices.

Bechtel Jacobs will utilize the authority of DOE Acquisition Letter 2000-02 dated April 20, 2000, to make noncompetitive awards of $5 million or less for manufacturing and $3 million or less for all other acquisitions to firms certified as 8(a) by the Small Business Administration.

As an approved participant in the DOE Mentor-Protégé program, we will seek opportunities for firms to execute appropriate portions of the Scope of Work.

Bechtel Jacobs will implement a local procurement preference program to benefit the local areas surrounding the ACP sites. This preference program will be designed to enhance the opportunities for SB/SDB/WOSB/HUBZone/VO/SDVOSB that generate economic activity in their areas.

(8) Subcontract Terms and Conditions

Bechtel Jacobs incorporates the flowdown clause requirements of FAR 52.219-8 (Oct 2000) applicable to solicitations and subcontracts exceeding $10,000 and $500,000 respectively and will ensure that those subcontractors with awards of $500,000 will adopt a similar plan. Mr. Robert E. Lynch will be responsible for the implementation and monitoring of this phase of the Subcontracting Plan.

(9) Reports, Studies, and Surveys

Bechtel Jacobs will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offer with the subcontracting plan, (iv) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts and/or SF 295, Summary Report, in accordance with the instructions of the forms and the Contracting Officer, and (v) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(10) Records

Types of records that will be maintained to demonstrate procedures, which have been adopted to insure compliance with the requirements and goals of this subcontract plan, include:

a. On a contract-by-contract basis, records to support award date including name and address of subcontractor as well as the size and type of business that received the award.
b. On a contract-by-contract basis, records on all solicitations indicating whether Small, Small Disadvantaged, Women Owned Small, HUBZone, Veteran-Owned and Service-Disabled Veteran Owned Businesses were solicited and, if not, why not.
c. Records to support other outreach efforts:
   - Contacts with minority and small business trade associations;
   - Contacts with business development organizations; and
   - Attendance at SB/SDB/WOSB/HUBZone/VO/SDVOSB procurement conferences and trade affairs.
d. Records to support internal activities:
   - Workshops, seminars, training programs, etc.;
   - Monitoring activities to evaluate compliance.
e. Small and Small Disadvantaged Business source lists maintained and exchanged through each Minority business publications (e.g., the "Minority Business Directory") are part of our reference material.

(11) SB/SDB/WOSB/HUBZone/VO/SDVOSB Initiatives and Innovations

Bechtel Jacobs will institute innovative programs to attract and assist SB/SDB/WOSB/HUBZone/VO/SDVOSB concerns and increase opportunities for such firms to participate in the ACP work. Such efforts are intended to broaden the available competitive base of suppliers and contractors and to assist small businesses in further developing their business, technical expertise, and ability to provide quality service to both the government and commercial sectors.

Business Assistance Program

Bechtel Jacobs will make available selected members of the Controller, Finance, Procurement, Cost, and Scheduling departments and other groups to provide counseling to small business representatives, both at Bechtel Jacobs own discretion and as requested by DOE-OR. Available counseling will include such areas as:

- Business and management techniques,
- Cost control and monitoring systems,
- Scheduling techniques,

- Finance and accounting,
- Resource identification,
- EM-M&I Employee Benefit Programs,
- Negotiation techniques,
- Labor relations counseling,
- Contracting under the FAR,
- Assistance in obtaining insurance and bonding for government and hazardous waste site projects,
- Business development practices, and
- Marketing and proposal services.

We will establish an aggressive program to provide business assistance to these firms, with the goal to enable them to develop in-house resources and capabilities to compete for larger and more complex work scopes at the ACP sites and in the commercial sector.

Technical Assistance Program

We will provide technical personnel and resources to small business contractors for guidance and training. Bechtel Jacobs' expertise in implementing efficient, cost-effective, safe, and environmentally sound techniques and methodologies will enable small businesses that participate in the technical assistance program to provide high-quality service at a lower cost and within scheduled requirements. Technical assistance will be provided in, but not limited to, the following areas:

- OSHA safety training for work on hazardous waste sites, in accordance with 29 CFR 1910.120 or 1926.65;
- Industrial safety and health;
- Technical training for specialized equipment, operations, and techniques;
- Radiation area work requirements;
- Prequalifying subcontractor-owned equipment for use on the ACP sites;
- Overviews of federal, state, and local regulations and DOE Orders that regulate a contractor's performance while working on the ACP sites; and

- Innovative construction techniques and practices.

The concept of technical assistance and technological transfer is not new to Bechtel Jacobs. We have developed formalized programs such as these for numerous domestic and overseas projects, both in the government and commercial sector. The ultimate goal of such initiatives is to help small emerging businesses achieve self-sufficiency, and to enhance their technical execution capabilities.

(12) Performance Against Plan

Bechtel Jacobs understands DOE's emphasis on small business participation by inclusion of FAR Clause 52.219-16, which provides incentive for superior performance. The strategy for implementation of this plan has the full support and commitment of Bechtel and Jacobs senior management.

Signed: (original signed by Steve D. Liedle
Bechtel Jacobs Company
Name: S. D. Liedle
titles: President
Date:
Plan Accepted By: (original signed by Jeffrey R. Burgan) , Contracting Officer
U. S. Department of Energy
Date:

PART III

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX D

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT

(See attached)

SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE PAYMENTS CLEARED FINANCING ARRANGEMENT

Agreement entered into this 13th day of March, 1998, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and Bechtel Jacobs Company LLC, a corporation/legal entity existing under the laws of the State of Delaware (hereinafter referred to as the Contractor) and SunTrust Bank, East Tennessee, N.A., a financial institution corporation existing under the laws of the State of Tennessee, located at 700 E. Hill Avenue, Knoxville TN, (hereinafter referred to as the institution).

Recitals

(a) On the effective date of December 18, 1997, DOE and the Contractor entered into Agreement(s) No. DE-AC05-98OR22700, or Supplemental Agreement(s) thereto, providing for an advance of funds by a letter of credit. Copy of such advance provisions has been furnished to the Institution.

(b) DOE requires that amounts advanced to the Contractor thereunder be deposited in a special demand deposit account at a financial institution covered by the Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000 (see Exhibit 3).

These special demand deposits must be kept separate from the Contractor's general or other funds and the parties are agreeable to do depositing of said amounts with the Institution.

(c) The special demand deposit account shall be designated Bechtel Jacobs Company LLC., Government Fund Account (General Account). Any ancillary accounts will be titled the same but have a different number and title to designate its specific use, i.e., "Payroll".

Covenants

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a title to the credit balance in said account to secure the repayment of all advance payments made to the Contractor, and said title shall be superior to any lien, title, or claim of the Institution with respect to such accounts.

(2) The Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the deposit and withdrawal of funds in the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Institution of directions from the Contractor, on behalf of DOE, the Institute shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Institution from the Contractor acting on behalf of DOE and purporting to be signed by, or signed at the written direction of, the Contractor may, insofar as the rights, duties, and liabilities of the Institution are concerned, be considered as having been properly issued and filed with the Institution by the Contractor.

(3) DOE, or its authorized representatives, shall have access to the books and records maintained by the Institution with respect to such special demand deposit accounts at all reasonable times and for all reasonable

purposes, including, but without limitation to, the inspection or copying of such books and records and any or all memoranda, checks, correspondence, or documents pertaining thereto. Such books and records shall be preserved by the Institution for a period of 6 years after the final payment under the Agreement.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Institution shall promptly notify DOE at:

Oak Ridge Operation Office
Oak Ridge Financial Service Center
P.O. Box 2001
Oak Ridge, Tennessee 37831-8772
Fax No. (423) 574-5374

(5) DOE shall authorize funds through issuance of a letter of credit or other means that is irrevocable to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Institution for the benefit of the special demand deposit account. The Institution agrees to honor upon presentation for payment all checks issued by the Contractor and to restrict all Letter of Credit withdrawals to an amount sufficient to maintain the account balance as close to zero as administratively possible each day.

If documentation furnished by the Institution demonstrates that this withdrawal procedure would be inequitable to DOE or to the Institution, Covenant 5 may be modified upon agreement of all parties concerned. The Institution shall comply with the provisions contained in I TFM 6-2000, which states that payment vouchers (TFS form 5805) ordinarily should not be drawn more frequently than daily or for amounts less than $5,000, and in no case should they be drawn for more than $5,000,000 unless so stated in the Letter of Credit. In the event that the balance remaining in the letter of credit limitation is not sufficient to cover the checks presented, the Department of the Treasury will, at the specific authorization of DOE, instruct the Federal Reserve Bank to immediately wire a transfer of funds from the Department of the Treasury account to the Institution's accounts, for the benefit of the Contractor's special demand deposit account, in an amount sufficient to cover the check presented in excess of the available Letter of Credit balance.

The Institution agrees to service the account in this manner based on the requirements and specifications contained in the solicitation. The Institution will be compensated through the payment of explicit fees as set forth in the Institution's proposal (which can be quoted annually for each of the 5 full fiscal years of the contract). The Institution agrees that per item costs detailed in Exhibit 2, Schedule of Bank Processing Charges contained in the Institution's proposal, shall remain constant during the term of this agreement.

(6) The Institution shall post collateral, acceptable under Department of the Treasury, Title 31-(CFR) Money and Finance: Treasury, Part 202 with the Federal Reserve Bank in an amount equal to the Federal funds deposited in all of the accounts included in this Agreement, less the Department of the Treasury-approved deposit insurance.

(7) This Agreement, with all its provisions and covenants, shall be in effect for a term of 5 1/2 years, beginning on the 1st day of April, 1998, and ending on the 30th day of September, 2003.

(8) DOE, the Contractor, or the Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.

(9) DOE or the Contractor may terminate this Agreement at any time upon 30 days' notice to the Institution if DOE or the Contractor or both parties find that the Institution has failed to substantially perform its obligations under this Agreement or that the Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner.

(10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital a, between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Institution shall be terminated automatically upon the delivery of written notice to the Institution.

(11) In the event of termination, the Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to allow for clearance of outstanding checks. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding checks presented for payment. Within 7 days of the expiration of the Agreement term, an analysis of the special demand deposit account shall be made by DOE to determine whether an insufficient or excessive balance was maintained in the time deposit account to compensate the Institution for services rendered up to the expiration date.

(a) If the analysis indicates that the Institution has been insufficiently compensated for services rendered up to the expiration of the Agreement, the Contractor shall:

1. Maintain on deposit, during this 90-day period, sufficient Federal funds to reimburse the Institution for prior cumulative loss of earnings and

2. Maintain on deposit in the time deposit account sufficient Federal funds to compensate the Institution for services rendered during the 90-day period.

(b) If the analysis indicated that the Institution has been overcompensated for services rendered up to the expiration of the Agreement, DOE shall close out the time deposit account and secure from the Institution a check in the amount equal to the net cumulative profit (profit minus compensation for service rendered during the 90-day period).

(c) If cumulative profit is not sufficient to compensate the Institute for services rendered during the 90-day period, adjustments shall be made to the time deposit account to compensate the Institution for the difference between the cost of service rendered during the 90-day period and the cumulative profit.

During the 90-day period, it is further understood that:

(a) The Institute shall maintain collateral in an amount sufficient to collateralize the highest balance in the account, less Federal Deposit Insurance Corporation coverage on the accounts, and that no cost of such collateralization shall accrue to the Contractor or DOE.

(b) All service charges shall be consistent with the amounts reflected in this Agreement.

(c) No charge will be made for any FDIC or other depository insurance assessed.

(d) All terms and conditions of the aforesaid bid submitted by the Institution that are not inconsistent with this 90-day additional term shall remain in effect.

(e) This Agreement shall continue in effect, with exception of the following:

1. Letter of Credit Funds Authorized (Covenant 5)
2. The term of this Agreement (Covenant 7)
3. Termination of Agreement (Covenant 8 and 9)

The Institution has submitted the forms entitled "Technical Representations and Certifications" and "Schedule of Financial Institution Charges". These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled "Financial Institution's Information on the Checks-Paid Letter of Credit," as an integral part of this Agreement.

IN WITNESS WHEREOF of the parties hereto have caused this Agreement, which consists of 6 pages, including the signature pages, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA

Jeffrey Burgan
Contracting Officer

Date Signed _____

By _____
(Name)

WITNESS

_____

Jeffrey R. Burgan 3/13/98
(Signature)

_____
(Signature of Witness)

Bechtel Jacobs Company LLC
(Contractor)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

By Darell von der Linden
(Name)

Date Signed: 3/10/98

(Signature)

Procurement Manager
(Title)

P. O. Box 4699, Oak Ridge, TN 37831-4699
(Address)

WITNESS for Bechtel Jacobs Company LLC

SABRA D. PARISH
(Typed Name of Witness

(Signature of Witness)

My commission expires: June 2, 2001

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

SunTrust Bank, East Tennessee, N.A.
(Typed Name of Financial Institution)

John E. Harris
(Typed Name of Financial Institution Representative)

(Signature of Financial Institution Representative)

Regional President

(Title)

1188 Oak Ridge Turnpike, Oak Ridge, TN 37830
(Address)

3-9-98
(Date of Signature)

Note: The Contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____, who signed this Agreement on behalf of the Contractor, was then _____ of said corporation; and that said Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____ (Corporate Seal)
(Signature)

Note: Financial Institution, if a corporation, should cause the following Certification to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and Certificate.

CERTIFICATE

I, Wanda E. Davis, certify that I am the Secretary of the corporation named as Institute herein; that John E. Harris, who signed this Agreement on behalf of the Institution, was then Regional President of said corporation; and that said Agreement was duly signed for in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Wanda E. Davis (Corporate Seal)
(Signature)

EXHIBIT 1

TECHNICAL REPRESENTATIONS AND CERTIFICATIONS

The financial institution makes the following technical representations and certifications as part of its proposal to the Department of Energy contractor to service a checks-paid letter of credit. (Check parentheses and complete blanks, as appropriate. All information is necessary.)

1. Financial Institution fiscal Information

   a. The financial institution is a (x) national chartered financial institution ( ) State chartered financial institution organized and existing in the State of Tennessee.

   b. The financial institution (x) maintains ( ) does not maintain an account with a Federal Reserve district or branch bank.

   c. The current (x) Federal ( ) State time deposit reserve requirement for the financial institution is 0 %.

   d. The financial institution insures each time account for $100,000 under federally approved deposit insurance (x) Yes ( ) No. Deposits are insured by a Government deposit insurance organization approved by the Department of the Treasury (a list of approved insurance organizations is attached to this form). If no, explain:

   e. The financial institution has on-line access to the Federal Reserve Communications System (FRCS). If no, explain:

      Yes

   f. To receive same-day credit from the Federal Reserve, the financial institution can ascertain the amount of payments cleared and submit a payment request through the FRCS by 3:00 o'clock p.m. eastern time.

2. Minority Business Enterprises

   Does the financial institution operate as a minority- or woman-owned business enterprise with at least 50-percent ownership by minority group or women members? ( ) Yes (x) No. (For present purposes, minority group members are African Americans, Hispanic Americans, Asian Americans, American Indians, Caucasian Women, Eskimos, and Aleuts.)

3. Technical

a. Does the financial institution currently service and reconcile an account with a payment volume equal to or exceeding the anticipated volume required by the contractor as stated in the "Schedule of Financial Institution Processing Charges"?

Service: (x) Yes ( ) No Reconciliation: (x) Yes ( ) No

b. What is the highest number of payments serviced and reconciled for a single account?

Service: 87,142/month Reconciliation: 87,142/month

I hereby certify that the responses to the above Technical Representations and Certifications and other statements are accurate and complete.

SunTrust Bank, East Tennessee, N.A.
(Type Name of Institution)

700 E. Hill Avenue, Knoxville, TN 37915
(Type Address of Institution)

423-544-2441
(Type Telephone Number)

SIGNATURE: Patti M. Fogarty

TITLE: Group Vice President

DATE: 2/20/98

SunTrust Bank, East Tennessee, N.A.
Bechtel Jacobs Job #23900, Contract No. DE-AC05-98OR22700
Contact: Patti Fogarty 544-2441
Ken Adams 544-2440

EXHIBIT 2 - SCHEDULE OF BANK PROCESSING CHARGES DATE OF PROPOSAL 2/20/98

Using the Monthly Explicit Fee Method of Compensation - Estimated Quantity is for all accounts.

March 3,1998	CONTRACTORS PROJECTED FIXED QUANTITY	COST PER UNIT	TOTAL
MONTHLY			
1. Number of Checks Debited (Volume Discount if Applicable)	6,000	.08	$ 480.00
2. Stop Payment Order	10	0	0
3. Incoming Wire (Includes daily Fed. drawdown)	26	5.00	130.00
4. Account Maintenance: a. General or "funding" account.	1	13.00	13.00
b. Controlled Pay or "zero balance" accounts.	4	100.00	400.00
5. Statements:			
a. Monthly (5 accounts)	5	0	0
b. Daily (2 accounts)	60	0	0
6. Deposit Items:			
a. Number of Deposit Tickets	40	.25	10.00
b. Number of Local	1200	.075	90.00
c. Number of Out of Town	75	.11	8.25
7. Reconciliation Services:			
a. Electronic File Transfer (paid checks)	4	5.00	20.00
Per Item	6000	.03	180.00
b. Electronic File Transfer (to bank-check issued-positive pay)	22	5.00	110.00
Per Item	6000	.01	60.00
c. Checks Sorted (by account)	4	0	0
Per Item	6000	.03	180.00
d. Microfilm Cartridges	5	0	0
Per Item	6000	.01	60.00
8. Currency Shipments ($ 2,000 Weekly) to be Transported by Bank's Contracted Armored Service (1 drop point)	4	38.00	152.00
9. ACH Items - Payroll Direct Deposits	4,000	.08	320.00
Per Transmission	4	5.00	20.00
10. Automated Services - On-Line Wire Transfers:			
a. Foreign	1	15.00	15.00
b. Domestic	30	8.00	240.00
c. Account Inquiries	20	5.50	110.00
11. Other Services:			
a. Federal Tax Deposits (Biweekly payroll+Monthly+Qtrly FUTA)	4	3.00	12.00
b. State Sales and Use Tax Payments (3 States)	3	3.00	9.00
12. Total fee required using the Explicit Fee method:			2,619.25

The quantities set forth herein are estimated. Estimated quantities will be deleted in any resulting agreement. There will be no adjusting of unit prices due to variations from bid quantities. Prices for services not contained herein which the bank believes are pertinent s/b listed on a separate sheet along with estimated quantities.

EXHIBIT 5

FINANCIAL INSTITUTION'S INFORMATION ON THE CHECKS-PAID LETTER OF CREDIT

1. GENERAL INFORMATION

The checks-paid letter of credit is a sophisticated technique used by the Federal Government to provide payment to a contractor who is performing services or providing goods to the Department of Energy (DOE) and its contractor. Under this method, the contractor issues checks for program purposes. When these checks are presented to the servicing financial institution for payment, the checks are totaled and the financial institution draws funds from the servicing Federal Reserve Bank of Richmond, Virginia. The financial institution is compensated for services performed in the form of either a non-interest bearing time deposit or a direct payment of explicit fees for services rendered. Information necessary to propose for and operate such an account and to establish the reporting requirements the financial institution must meet are provided below.

2. PROPOSAL INFORMATION

a. Upon receipt of the solicitation from the contractor, the financial institution should review the package to ensure that all material listed in the cover letter has been included. If anything is missing, the financial institution representative should contact the contractor's representative named in the letter to obtain the missing material. If all material is present, the financial institution should review the procedures for submitting a proposal, the operating procedures, the reporting requirements, and the sample agreement. Any questions or requests for clarification shall be directed in writing to the designated contractor's representative.

b. Once the procedures and requirements are understood and the financial institution decides to submit a proposal, these procedures should be followed:

(1) Check or complete all responses contained in the "Technical Representations and Certifications" form.

(2) Complete the "Schedule of Financial Institution Processing Charges" form. All extensions of the unit prices will be subject to verification. In case of inconsistency between the unit price and the extension, the unit price shall prevail. In case of error in addition, the correct total shall prevail.

(3) Ensure that all required information has been provided before forwarding the completed forms to the designated contractor representative. These forms constitute the institution's formal proposal to the contractor. Incomplete proposals will not be considered.

(4) Forward the completed proposal with a cover letter to the contractor's representative at the address provided. Proposals not received by the date established for submission will not be considered.

c. Financial institutions submitting a proposal will be notified by letter of the institution selected within 30 calendar days after the close of the solicitation period.

d. The selected financial institution will meet with contractor and DOE representatives to clarify any operational questions and to sign the contractual agreement and required corporate certificates for both the contractor and the financial institution. The agreement term is for a period of 5 1/2 years. Specific termination provisions are contained in the agreement for termination before the date specified in the agreement.

3. OPERATING REQUIREMENTS

a. The institution will total the checks presented daily for collection (payments cleared) against the special account(s) as provided for in the agreement and draw funds from the Federal Reserve Bank of Richmond, Virginia. The Federal Reserve Bank of Richmond, Virginia will arrange to credit the institution's reserve account at the regional Federal Reserve bank or branch designated by the institution. The amount of the drawdown should be sufficient to maintain account balances as close to zero as administratively possible. Normally, the amount of the drawdown will be the total of the checks cleared reduced by any deposits. The institution must determine the cutoff time for processing checks and deposits to ensure same-day credit. The drawdown is effected by completing a TFS Form 5805 "Request for Funds", and sending an on-line request for funds (type code 1031) to the Federal Reserve Bank (FRB) of Richmond via Fedwire by 5:00 p.m. eastern time.

(1) The DOE finance office will provide the financial institution with a partially completed SF -1194, "Authorized Signature Card for Payment Voucher on Letter of Credit." The institution will complete the form with typed names and the signatures of the individual being authorized to sign or countersign the TFS Form 5805. Place a check in the block entitled "Any Two Signatures Required to Sign or Countersign." The signature in the lower left-hand corner of the SF - 1194 should be that of an institution official empowered to make such designations.

(2) The DOE finance office will provide a supply of TFS Form 5805 to the financial institution. The TFS Form 5805 is the paper instrument used to support the on-line request for funds (type code 1031) prepared for the amount of the payments cleared each day.

b. If the financial institution providing these services is a branch of a parent institution, the drawdown on the letter of credit and subsequent transfer of funds from the servicing FRB must be accomplished on the same day that the funds are requested.

4. PENALTIES ON EXCESS FUNDS

DOE policy requires the monthly average daily balance be kept net positive. The financial institution is required to pay interest penalties on the positive balances calculated. To minimize overdrafts, a cutoff time as late in the day as administratively possible shall be established. When the daily account balance overdraft occurs, the overdraft amount shall be netted against the next day's activity. The interest penalties on the average daily balance for each month shall be netted on a yearly basis with the financial institution remitting any net interest penalty to the contractor as soon as possible following the end of each fiscal year.

- If the calculated average daily balance for the year results in a positive account balance, the financial institution will compensate DOE for the loss of availability of funds determined by multiplying the excess fund balance by the Federal Funds Rate adjusted for the proper period of time.

5. REPORTING REQUIREMENT

a. DOE will be advised daily via the Treasury's Cash Link system the amount of the daily drawdown. The bank will notify the contractor via its on-line electronic communication system or some other method deemed acceptable by all parties the amount of the daily drawdown.

b. The financial institution will provide the contractor with a bank statement and an account analysis monthly. The account analysis will include the data necessary for the DOE finance office and the contractor to determine that the costs of the services are commensurate with the level of compensation being provided to the financial institution.

6. EXCEPTIONS.

The U.S. Treasury Financial Management Service and/or the Federal Reserve Bank of Richmond acting as the agent reserves the right to make changes in method or procedure as it may, from time to time, deem appropriate. The institution will be required to comply with such changes but may, if warranted, seek additional compensation from DOE and its contractor.

PART III

SECTION J – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX E

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

(See attached)

The DOE Directives and Laws found in the following listing are the "List of Applicable Laws and Regulations," "List of Applicable Directives" and "Lists A and B" as those terms are used in paragraph (b) of the "I" Clause 970.5204-2, LAWS, REGULATIONS, AND DOE DIRECTIVES. Exemptions, waivers, variances and implementation plans that exist in contract DE-AC05-98OR22700 will carry forward to this contract. List A is not necessarily an all-inclusive list.

Both parties agree through the term of this contract to use their best efforts and to cooperate in seeking the reduction of non-value-added requirements and processes that impede progress. The Contractor should follow the established exemption process to obtain relief from requirements of these regulations where applicable. The Field Office will enable tailoring of requirements using a graded approach and document such actions through clarification letters as deemed appropriate by the Contracting Officer Representative.

It is anticipated that during the performance of this contract, the conditions for applicability of certain DOE directives may no longer exist. In any such situation where the Contractor seeks relief from the requirements of such DOE directives, the Contractor may notify the Contracting Officer (CO) in writing, explaining the reasons for its belief that the DOE Directive(s), in whole or in part, no longer apply to contract performance. The Contractor may, at its own risk and assumption of all responsibility, cease to fulfill the requirements of such Directives once written notification has been delivered to the CO. The CO may determine that the conditions for applicability of a DOE Directive still exist, and may direct the Contractor to continue compliance with the DOE directive. Additionally, even such direction by the CO, if the conditions for applicability of a DOE Directive once again arise, the DOE directive will immediately become applicable once again.

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
7 CFR 658	Farmland Protection Policy Act
10 CFR 1021	National Environmental Policy Act-Implementing Procedures
10 CFR 1022	Compliance with Floodplain/Wetlands Environmental Review Requirements
10 CFR 71	Packaging and Transportation of Radioactive Material
10 CFR 830, Subpart A	Nuclear Safety Management, Subpart A, Quality Assurance Requirements
10 CFR 830, Subpart B	Nuclear Safety Management, Safety Basis Requirements
10 CFR 835	Occupational Radiation Protection
10 CFR 850	Beryllium Rule
10 CFR 851	Worker Safety and Health Program
10 CFR 962	Byproduct Material
14 CFR 135	Operating Requirements: Commuter and on-Demand Operations
14 CFR 77	Objects Affecting Navigable Airspace
14 CFR 91	General Operating and Flight Rules
15 CFR 990	Natural Resource Damage Assessments
18 CFR 12	Safety of Water Power Projects and Project Works
18 CFR 1304	Approval of Construction in the Tennessee River System and Regulation of Structures
23 CFR 625	Design Standards for Highways
29 CFR 1904	Recording and Reporting Occupational Injuries and Illnesses
29 CFR 1910	Occupational Safety & Health Standards
29 CFR 1926	Safety and Health Regulations for Construction
33 CFR 320	General Regulatory Policies
33 CFR 322	Permits for Structures or Work in or Affecting Navigable Waters of the United States
33 CFR 323	Permits for Discharges of Dredged or Fill Material into Waters of the United States
33 CFR 325	Processing of Department of the Army Permits
33 CFR 328	Definition of Waters of the United States
33 CFR 329	Definition of Navigable Waters of the United States
33 CFR 330	Nationwide Permit Program
36 CFR 296	Protection of Archaeological Resources: Uniform Regulations
36 CFR 60	National Register of Historic Places
36 CFR 63	Determinations of Eligibility for Inclusion in the National Register of Historic

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
	Places
36 CFR 65	National Historic Landmarks Program
36 CFR 68	the Secretary of the Interior's Standards for the Treatment of Historic Properties
36 CFR 78	Waiver of Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act
36 CFR 79	Curation of Federally-Owned and Administered Archaeological Collections
36 CFR 800	Protection of Historic and Cultural Properties
40 CFR 60	Standards of Performance for New Stationary Sources
40 CFR 61	National Emission Standards for Hazardous Air Pollutants
40 CFR 63	National Emission Standards for Hazardous Air Pollutants for Source Categories
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 70	Title V Operating Permit Program
40 CFR 80	Regulation of Fuels and Fuel Additives
40 CFR 82	Protection of Stratospheric Ozone
40 CFR 110	Discharge of Oil
40 CFR 112	Oil Pollution Prevention
40 CFR 116	Designation of Hazardous Substances
40 CFR 117	Determination of Reportable Quantities for Hazardous Substances
40 CFR 122	EPA Administered Permit Programs: the National Pollutant Discharge Elimination System
40 CFR 125	Criteria and Standards for the National Pollutant Discharge Elimination System
40 CFR 129	Toxic Pollutant Effluent Standards
40 CFR 141	National Primary Drinking Water Regulations
40 CFR 142	National Primary Drinking Water Regulations Implementation
40 CFR 143	National Secondary Drinking Water Regulations
40 CFR 144	Underground Injection Control Program
40 CFR 146	Underground Injection Control Program: Criteria and Standards
40 CFR 170	Worker Protection Standard
40 CFR 171	Certification of Pesticide Applicators
40 CFR 191	Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Radioactive Wastes
40 CFR 230	Section 404(B)(1) Guidelines for Specification of Disposal Sites for Dredged or

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
	Fill Material
40 CFR 232	404 Program Definitions: Exempt Activities not Requiring 404 Permits
40 CFR 243	Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste
40 CFR 244	Solid Waste Management Guidelines for Beverage Containers
40 CFR 246	Source Separation for Materials Recovery Guidelines
40 CFR 247	Comprehensive Procurement Guideline for Products Containing Recovered Materials
40 CFR 257	Criteria for Classification of Solid Waste Disposal Facilities and Practices
40 CFR 258	Criteria for Municipal Solid Waste Landfills
40 CFR 260	Hazardous Waste Management System: General
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 263	Standards Applicable to Transporters of Hazardous Waste
40 CFR 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
40 CFR 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal
40 CFR 266	Standards for the Management of Specific Hazardous Wastes and Specific Type of Hazardous Waste
40 CFR 268	Land Disposal Restrictions
40 CFR 270	EPA Administered Permit Programs: the Hazardous Waste Permit Program
40 CFR 273	Standards for Universal Waste Management
40 CFR 279	Standards for the Management of Used Oil
40 CFR 280	Technical Standards and Corrective Action Requirements
40 CFR 300	National Oil and Hazardous Substances Pollution Contingency Plan
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
40 CFR 370	Hazardous Chemical Reporting: Community Right-to-Know
40 CFR 372	Toxic Chemical Release Reporting: Community Right-to-Know
40 CFR 373	Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property
40 CFR 403	General Pretreatment Regulations for Existing and New Sources of Pollution
40 CFR 503	Standards for the Use or Disposal of Sewage Sludge

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
40 CFR 707	Chemical Imports and Exports
40 CFR 761	Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
40 CFR 763	Asbestos
40 CFR 790	Procedures Governing Testing Consent Agreements and Test Rules
43 CFR 7	Protection of Archaeological Resources
43 CFR 10	Native American Graves Protection and Repatriation Regulations
43 CFR 11	Natural Resource Damage Assessments
49 CFR 100-199	U.S. Department of Transportation (DOT) Hazardous Materials Regulations
49 CFR 107	Hazardous Materials Program Procedures
49 CFR 171	General Information, Regulations, and Definitions
49 CFR 172	Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements
49 CFR 173	Shippers - General Requirements for Shipments and Packaging
49 CFR 174	Carriage by Rail
49 CFR 176	Carriage by Vessel
49 CFR 177	Carriage by Public Highway
49 CFR 178	Specifications for Packaging
49 CFR 179	Specifications for Tank Cars
49 CFR 213	Track Safety Standards
49 CFR 214	Railroad Workplace Safety
49 CFR 216	Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment
49 CFR 234	Grade Crossing Signal System Safety [Amended] (Implementation Assumption - 49 CFR 234 applies only to track on DOE property)
49 CFR 236 Rules	Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances
49 CFR 325 – 399	U. S. Department of Transportation (DOT) Federal Motor Carrier Safety Regulations
49 CFR 367	Standards for Registration with States
49 CFR 373	Receipts and Bills
49 CFR 376	Lease and Interchange of Vehicles
49 CFR 377	Payment of Transportation Charges

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
49 CFR 382	Controlled Substances and Alcohol Use and Testing
49 CFR 383	Commercial Driver's License Standards; Requirements and Penalties
49 CFR 385	Safety Fitness Procedures
49 CFR 387	Minimum Levels of Financial Responsibility for Motor Carriers
49 CFR 390	Federal Motor Carrier Safety Regulations; General
49 CFR 391	Qualifications of Drivers
49 CFR 392	Driving of Commercial Motor Vehicles
49 CFR 393	Parts and Accessories Necessary for Safe Operation
49 CFR 395	Hours of Service of Drivers
49 CFR 396	Inspection, Repair, and Maintenance
49 CFR 397	Transportation of Hazardous Materials; Driving and Parking Rules
49 CFR 399	Employee Safety and Health Standards
49 CFR 830	Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records
50 CFR 17	Endangered and Threatened Wildlife and Plants
50 CFR 222	Endangered Fish or Wildlife
7 U.S.C. 136 et seq.	Environmental Pesticide Control
15 U.S.C. 2601-2671	Toxic Substances Control Act
16 U.S.C. 470ii	Archaeological Resources Protection Act
16 U.S.C. 831 et seq.	Tennessee Valley Authority Act
16 U.S.C. 1531 et seq.	Endangered Species Act of 1973
25 U.S.C. 3001 et seq.	Native American Graves Protection and Repatriation Act of 1990
29 U.S.C. 654	OSHA General Duty Clause
33 U.S.C. 1251 et seq.	Clean Water Act, as amended
33 U.S.C. 2701 - 2761	Oil Pollution Act
42 U.S.C. 2011 et seq.	Atomic Energy Act of 1954
42 U.S.C. 300f et seq.	Safe Drinking Water Act, as amended
42 U.S.C. 4321 et seq.	National Environmental Policy Act
42 U.S.C. 6901 et seq.	Resource Conservation and Recovery Act of 1976 (RCRA) (PL 94-0580)
42 U.S.C. 6939c et seq.	Federal Facility Compliance Act
42 U.S.C. 7401 et seq.	Clean Air Act, as amended
42 U.S.C. 9601 et seq.	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List A

Requirement	Description
42 U.S.C. 11001-11050	Emergency Planning and Community Right-to-Know Act
42 U.S.C. 13101-13109	Pollution Prevention Act of 1990
49 U.S.C. 1801 et seq.	Hazardous Materials Transportation Act, as amended
49 U.S.C. 2503	Motor Carrier Safety Act
Public Law 89-665	National Historic Preservation Act (NHPA) of 1966, as amend
Public Law 91-596, Section 5(a)	Occupational Safety and Health (OSHA) General Duty Clause
Public Law 93-291	Archeological and Historic Preservation Act of 1974
Public Law 107-347	The E-Government Act
T.C.A. 43-8-101 et seq.	Tennessee Insecticide, Fungicide, and Rodenticide Act
T.C.A. 50-3-203	Tennessee Safe Needles Act
T.C.A. 55-8	Operation of Vehicles - Rules of the Road
T.C.A. 55-8-101 et seq.	Operation of Vehicles: Rules of the Road
T.C.A. 58-2-301 et seq.	Accidents Involving Hazardous Materials
T.C.A. 65-15-101 et seq.	Motor Carriers
T.C.A. 68-105	Blasting Standards
T.C.A. 68-120-101	Fire Protection Code
T.C.A. 68-140	Emergency Services, Part 5 Emergency Medical Services Act of 1983
T.C.A. 68-20-101	Safety and Health, Chapter 20, Boiler Inspection, Erection and Repair
T.C.A. 68-46-306A et seq.	Tennessee Pollution Prevention Act
T.C.A. 68-201-101 et seq.	Tennessee Air Quality Act
T.C.A. 68-211-801 et seq.	Tennessee Solid Waste Disposal Act
T.C.A. 68-212-101 et seq.	Tennessee Hazardous Waste Management Act
T.C.A. 68-212-301 et seq.	Tennessee Hazardous Waste Reduction Act
T.C.A. 68-215-101 et seq.	Tennessee Petroleum Underground Storage Tank Act
T.C.A. 68-216-101 et seq.	Tennessee Oil Spill Cleanup and Environmental Preservation Act
T.C.A. 68-221-401 et seq.	Tennessee Subsurface Sewage Disposal Systems
T.C.A. 68-221-701 et seq.	Tennessee Safe Drinking Water Act
T.C.A. 69-10-201	Tennessee Boating Safety Act of 1965
T.C.A. 69-12-101 et seq.	The Safe Dams Act of 1973
T.C.A. 69-3-101 et seq.	Tennessee Water Quality Control Act of 1977
TN 0080-6	Division of Plant Industries
TN 0080-6-16	Regulations Governing Use of Restricted Use Pesticides

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List A

Requirement	Description
TN 0400-6-2	Rare Plant Protection and Conservation Regulations
TN 0780-2	Division of Fire Prevention
TN 1200-1	Division of Solid and Hazardous Waste Management
TN 1200-2	Division of Occupational and Radiological Health
TN 1200-3	Division of Air Pollution Control
TN 1200-4	Division of Water Quality
TN 1200-5	Division of Water Supply
TWRA 94-16	Proclamation - Wildlife in Need of Management
TWRA 94-17	Proclamation - Endangered or Threatened Species
City of Oak Ridge Ordinance 9-91	Sewer Use

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
DOE O 110.3A, Attachment 1	Conference Management	
DOE O 130.1, Attachment 1	Budget Formulation Process	Expiration date extended to 05/01/2003 by DOE N 251.45
DOE O 137.1A	Plan for Operating In the Event of a Lapse in Appropriations	
DOE O 142.3	Unclassified Foreign Visits and Assignments Program	
DOE O 151.1C	Comprehensive Emergency Management System	Implementation Plan approved by DOE on 09/11/2006
DOE O 200.1, Attachment 1	Information Management Program	
DOE O 203.1, Section 4	Limited Personal Use of Government Office Equipment Including Information Technology	
DOE N 203.1	Software Quality Assurance	Expiration date extended to 12/31/2001 by DOE N 251.40
DOE O 205.1A	Department Of Energy Cyber Security Management Program	Implementation Plan approved by ORO/DOE, 08/06/2007. Reviewed PCSP Rev 3.2
DOE N 205.1, Attachment 1	Unclassified Cyber Security Program	
DOE M 205.1-4	National Security System Manual	
DOE N 205.2, Attachment 1	Foreign National Access to DOE Cyber Security Systems	Expiration date extended to 09/30/2006 by DOE N 205.16
DOE N 205.3, Attachment 1	Password Generation, Protection, and Use	Expiration date extended to 09/30/2006 by DOE N 205.16
DOE N 205.4, Attachment 1	Handling Cyber Security Alerts and Advisories and Reporting Cyber Security Incidents	Cancels Chapter III, Section 8, of DOE M 471.2-2. Expiration date extended to 07/06/2005 by DOE N 205.13
DOE N 205.8	Cyber Security Requirement for Wireless Devices and Information Systems	
DOE N 205.9	Certification and Accreditation Process for Information Systems Including National Security Systems	
DOE N 205.10	Cyber Security Requirement for Risk Management	

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List B

Requirement	Description	Compliance Status & Notes
DOE N 206.4	Personal Identity Verification	Three implementation assumptions per BJC Letter, dated 08/27/2007. Expiration date extended to 03/22/2007 by DOE N 251.67
DOE N 206.5	Response and Notification Procedures for Data Breaches Involving Personally Identifiable Information	Implementation Plan (BJC/OR-3051) submitted to ORO/DOE, 04/30/2008
DOE O 210.2	DOE Corporate Operating Experience Program	Compliance: Implementation Plan (BJC/OR-2748) submitted to ORO/DOE 02/22/2007 and approved 03/26/2007
DOE O 221.1, Attachment 1	Reporting Fraud, Waste, and Abuse To the Office of Inspector General	
DOE O 221.2A, Attachment 1	Cooperation with the Office of Inspector General	
DOE O 221.3	Establishment of Management Decisions on Office of Inspector General Reports	
DOE N 221.14	Reporting Fraud, Waste, and Abuse	
DOE O 224.3	Audit Resolution and Follow-up Program	
DOE O 225.1A	Accident Investigations	
DOE O 226.1A	Implementation of Department of Energy Oversight Policy	Compliance: Implementation Plan (BJC/OR-2466) with revised gap analysis approved by ORO/DOE, 07/17/2006
DOE P 226.1A	Department of Energy Oversight Policy	Compliance: Implementation Plan (BJC/OR-2466) with revised gap analysis approved by ORO/DOE, 07/17/2006
DOE M 231.1-1A, Change 2	Environment, Safety, and Health Reporting Manual	Cancels DOE M 231.1-1A. Attachment 2, Section 4 does not apply
DOE M 231.1-2	Occurrence Reporting and Processing of Operations Information	
DOE N 234.1	Reporting of Radioactive Sealed Sources	
DOE O 241.1A, Attachment 1	Scientific and Technical Information Management	
DOE O 243.1	Records Management Program	

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List B

Requirement	Description	Compliance Status & Notes
DOE O 243.2	Vital Records	
DOE O 251.1B	Departmental Directives Program	
DOE M 251.1-1B	Departmental Directives Program Manual	
DOE O 252.1, Attachment 1	Technical Standards Program	
DOE O 350.1, Change 1, Attachment 1, for Chapters I, II, III, IV, V, VI, VII, VIII, and IX	Contractor Human Resource Management Programs	
DOE O 413.1A, Attachment 1	Management Control Program	
DOE O 413.3A	Program and Project Management for the Acquisition of Capital Assets	
DOE O 414.1C	Quality Assurance	
DOE O 420.1B	Facility Safety (CRD requirements including the following IA - A system engineering program will be established, implemented, and maintained meeting the requirements of DOE O 420.1A, Facility Safety, Attachment 2, Section 4.5 System Engineering Program. The Systems Engineering Program will be applied in a graded process to active safety systems as identified in DOE approved documented safety analyses for Nuclear Category 2 and 3 facilities. The systems governed by Section 4.5 are identified in the BJC List of Active Safety Systems (latest approved revision). This controlled list identifies the specific systems as well as any ownership / interface issues associated with the identified systems.)	DOE O 420.1B Revised Implementation Plan (BJC/OR-2575/R1) approved by ORO/DOE, 10/05/2006. Compliance: Revised Implementation Plan for DOE O 420.1A, Section 4.5 (BJC/OR-1241) approved by ORO/ DOE, 04/23/2003. Implementation Plans (BJC/OR-1102, -1103, & -1129) for DOE O 420.1, Change 3, approved by ORO/DOE, 10/11/2002
DOE O 425.1C	Startup and Restart of Nuclear Facilities	
DOE O 430.1B, Change 1	Real Property Asset Management	Sections 1c, 5b, 5c, 6a, and 6d does not apply. BJC Letter, Attachment 1, dated (07/14/2004)
DOE O 433.1A	Maintenance Management Program for DOE Nuclear Facilities	Clarification: DOE M 411.1-1C, DOE-STD-1027-92, Change 1, and DOE-STD-1073-2003 are not in the BJC Contract

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
DOE O 435.1, Attachment 1, 1.A and 1.D	Radioactive Waste Management. DOE O 435.1, CRD 1.A and 1.D (IA - Wherever DOE O 435.1, or M 435.1-1, Change 1, refers to either being subject to or requiring compliance with either DOE O 435.1 or M 435.1-1, Change 1, this shall be read as subject to or requiring compliance with the Contract.)	
DOE M 435.1-1, Change 1	**Radioactive Waste Management Manual IA - Wherever DOE O 435.1 or M 435.1-1, Change 1 refers to either being subject to or requiring compliance with either DOE O 435.1, or M 435.1-1, Change 1, this shall be read as subject to or requiring compliance with the Contract. IA - Wherever DOE M 435.1.1-1, Change 1 requires submission to or obtaining approvals from DOE HQ elements, the Contractor shall satisfy this by submission of information or request to DOE ORO. DOE M 435.1-1, Change 1, Chapter I, including only the following sections, as modified: I.1.C I.2.F.(2) (IA - A radioactive waste management basis will be developed, reviewed, approved, and maintained for each DOE radioactive waste management facility, operation, and activity. The radioactive waste management basis may be specified in multiple documents. For new facilities, operations, and activities, the basis will be approved before operations begin.) I.2.F.(4) I.2.F.(5) (IA - Section will be read as follows: (5) Environmental Restoration, Decommissioning, and Other Cleanup Waste. Ensuring the management and disposal of radioactive waste resulting from environmental restoration activities, including decommissioning, meet substantive requirements. Environmental restoration activities using the CERCLA process (in accordance with Executive Order 12580) may demonstrate compliance with substantive requirements (including the Performance Assessment and performance objectives, as well as the Composite Analysis) through the CERCLA process. Environmental restoration activities that will result in the off-site management and disposal of radioactive waste must meet the applicable	**Compliance: Clarification Letters – BJC dated 11/21/2003 and ORO dated (12/11/2003)

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
	contract requirements. Field Elements performing environmental restoration activities involving development and management of radioactive waste disposal facilities under the CERCLA process shall: (a) Submit certification to the Deputy Assistant Secretary for Environmental Restoration that compliance with the substantive contract requirements have been met through application of the CERCLA process; and (b) Submit the decision document, such as the Record of Decision, or any other document that serves as the authorization to dispose, to the Deputy Assistant Secretary for Environmental Restoration for approval.)	
	I.2.F.(6) (IA - Contractor is responsible for developing only the technical aspects of waste acceptance requirements.)	
	I.2.F.(7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20)	
	I.2.G.(1)	
	Chapter III, except section III.C, III.F, and modified as follows: III.D. (IA - the RWMB will be tailored to each facility, and it will incorporate salient requirements from documents such as the following: radiation protection program, health and safety plans, SARs, TSRs, and procedures.)	
	III.M.(1) and (2) (IA - Site evaluation and facility design of existing facilities shall meet the requirements of RCRA and safety basis documentation as amended by a facility-specific evaluation that considers and tailors the requirements of Chapter III.M.(2). IA - the parameters cited in III.M.(2) will be considered for facility requirements and general design criteria. IA - III.M.2.(d) Instrumentation and controls requirements are applicable only to liquid waste.)	
	III.N.(1) (IA - Storage Prohibitions. Transuranic waste in storage shall not be readily capable of detonation, explosive decomposition, reaction at anticipated pressures and temperatures, or explosive reaction with water, except as authorized by the RWMB.)	
	III.P (IA - Transuranic waste shall be disposed in accordance with the requirements of 40 CFR Part 191, Environmental Radiation Protection Standards for Management and Disposal of Spent	

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
	Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, except as allowed by the definition of transuranic waste.) III.Q. (IA - the parameters cited in III.Q.(1) will be considered for sampling or monitoring.) DOE M 435.1-1, Change 1, Chapter IV, except section IV.C, IV.F, and modified as follows: IV.D. (IA - the RWMB will be tailored to each facility and it will incorporate salient requirements from documents such as the following: radiation protection program, health and safety plans, SARs, TSRs, and procedures.) IV.M. (IA - the parameters cited in IV.M.(2) will be considered for facility requirements and general design criteria.) IV.N.(1) (IA - Storage Prohibitions. Low-level waste in storage shall not be readily capable of detonation, explosive decomposition, reaction at anticipated pressures and temperatures, or explosive reaction with water, except as authorized by the RWMB.) IV.N.(2) (IA - Consistent with provisions in Item (2), the DOE ORO authorizes storage of legacy waste consistent with plans and budget for dispositioning the waste through the RWMB. Storage Integrity will be assured through a graded approach using a variety of storage facilities, including outside storage for legacy waste. In all cases, a combination of waste characteristics, container characteristics, storage environment, inspections, and monitoring will be taken into consideration and will be authorized through the RWMB.) IV.N.(7) (IA - the second sentence of item (7) shall be read as: Accumulation of LLW in work areas is to be minimized. LLW will be "processed out" of work areas where it is being accumulated within 120 days of final closure of the container. It is generally intended that final closure will be when the container is filled to capacity. "Process out" means transfer to proper treatment, disposal, or storage (based on characterization data). IV.R. (IA - the parameters cited in IV.R.(1) will be considered for sampling or monitoring.)	
DOE O 440.2B, Change 1	Aviation Management and Safety	

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Requirement	Description	Compliance Status & Notes
DOE O 442.1A, Attachment 1	Department of Energy Employee Concerns Program	
DOE M 442.1-1	Differing Professional Opinions on Technical Issues Involving Environment, Safety and Health	
DOE O 450.1, Administrative Change 1	Environmental Protection Program	Implementation assumptions submitted to ORO/DOE, 08/22/2008
DOE M 450.4-1	Integrated Safety Management System Manual	Two clarifications per BJC letter submitted on 01/09/2007
DOE O 451.1B, Change 1	National Environmental Policy Act Compliance Program	
DOE O 460.1B	Packaging and Transportation Safety	
DOE O 460.2A	Departmental Materials Transportation and Packaging Management	
DOE M 460.2-1	Radioactive Material Transportation Practices	
DOE O 461.1A	Packaging and Transfer or Transport of Materials of National Security Interest	
DOE M 461.1-1, Change 1	Packaging and Transfer of Materials of National Security Interest Manual	
DOE O 470.2B, Attachment 2	Independent Oversight and Performance Assurance Program	
DOE N 470.2	Reporting Unofficial Foreign Travel	Expiration date extended to 12/31/2001 by DOE N 251.63
DOE O 470.3A	Design Basis Threat Policy (U)	
DOE M 470.4-1, Change 1	Safeguards and Security Program Planning and Management	
DOE M 470.4-2, Change 1	Physical Protection	Chapter X is not included per BJC letter 03/18/2008
DOE M 470.4-4, Change 1	Information Security	
DOE M 470.4-5	Personnel Security	
DOE M 470.4-6, Change 1	Nuclear Material Control and Accountability	
DOE M 471.1-1, Change 1	Identification and Protection of Unclassified Controlled Nuclear Information Manual	Expiration date extended to 07/07/2006 by DOE N 251.64
DOE O 471.1A, Attachment 1	Identification and Protection of Unclassified Controlled Nuclear Information	Expiration date extended to 07/07/2006 by DOE N 251.64

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Requirement	Description	Compliance Status & Notes
DOE M 471.2-2, Attachment 1	Classified Information Systems Security Manual	DOE N 205.3 cancels paragraphs 4j(2) and 4j(6) of Chapter VI; and paragraph 12a(2)(a) of Chapter VII. DOE N 205.4 cancels Section 8 of Chapter III
DOE O 471.3	Identifying and Protecting Official Use Only Information	Compliance: Implementation Plan (BJC/OR-1657, Rev 2 approved by DOE on (1/26/2006)
DOE M 471.3-1	Manual for Identifying and Protecting Official Use Only Information	Compliance: Implementation Plan (BJC/OR-1657, Rev 2 approved by DOE on (1/26/2006)
DOE M 473.1-1	Physical Protection Program Manual	
DOE O 475.1	Counterintelligence Program	
DOE M 475.1-1B	Manual for Identifying Classified Information	
DOE O 475.2	Identifying Classified Information	
DOE O 481.1B, Attachment 1	Work for Others (Non-Department of Energy Funded Work)	
DOE M 481.1-1A, Change 1	Reimbursable Work for Non-Federal Sponsors Process Manual	
DOE O 482.1, Attachment 1	DOE Facilities Technology Partnering Programs	
DOE O 483.1, Attachment 1	DOE Cooperative Research and Development Agreements	
DOE M 483.1-1	DOE Cooperative Research and Development Agreements Manual	
DOE O 522.1	Pricing of Departmental Materials and Services	
DOE O 534.1B, Attachment 1	Accounting	
DOE O 551.1B, Attachment 2	Official Foreign Travel	
DOE M 573.1-1	Mail Services User's Manual	
DOE O 580.1	DOE Personal Property Management Program	
DOE O 1270.2B	Safeguards Agreement with the International Atomic Energy Agency	
DOE O 1340.1B	Management of Public Communications Publications and Scientific, Technical, and Engineering Publications	
DOE O 2100.8A	Cost Accounting, Cost Recovery, and Interagency	

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List B

Requirement	Description	Compliance Status & Notes
	Sharing of Information Technology Facilities	
DOE O 2340.1C	Coordination of General Accounting Office Activities	This document is not directly applicable to the Contractor; it is included in the list of applicable documents because the Contractor must provide certain information or input to DOE in order for DOE to comply with requirements specified in the document
DOE O 5400.5, Change 2	Radiation Protection of the Public and the Environment	
DOE O 5480.19, Change 2	Conduct of Operations Requirements for DOE Facilities	
DOE O 5480.20A, Change 1	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities	
DOE O 5639.8A	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities	
DOE O 5660.1B	Management of Nuclear Materials	
DOE O 5670.1A	Management and Control of Foreign Intelligence	
DOE-STD-1120-98	Integration of Environment, Safety and Health into Facility Disposition Activities	
DOE-STD-1186-2004	Specific Administrative Controls	Compliance: Implementation Plan (BJC Letter 05/31/2005) approved by ORO/DOE, 06/13/2005

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Requirement	Description	Compliance Status & Notes
ORO O 130, Chapter II, Change 3, Attachment 1	Shutdown of Departmental Operations Upon Failure by Congress to Enact Appropriations	
ORO O 150, Chapter I, Change 5	Comprehensive Emergency Management System	
ORO O 220, Chapter II, Change 6, Attachment 1	Cooperation with the Office of Inspector General	
ORO O 220, Chapter III, Change 3, Attachment 1	Establishment of Management Decisions on Office of Inspector General Reports	
ORO O 220, Chapter IV, Change 3, Attachment 1	Coordination of General Accounting Office Activities	
ORO O 220, Chapter VII, Change 5, Attachment 1	Audit Resolution and Follow-up	
ORO O 230, Chapter III, Change 3	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Requirements	
ORO O 250, Chapter I, Change 3, Attachment 1	ORO Standards Management Program Overview	
ORO O 250, Chapter II, Change 6, Attachment 1	Oak Ridge Operations Directives System	
ORO O 250, Chapter IV, Change 2, Attachment 1	Impact Assessments	
ORO O 250, Chapter VI, Change 2, Attachment 1	Directive Implementation Plans and Exemption Requests	
ORO O 250, Chapter VIII, Change 2, Attachment 1	Requirements Change Notices	
ORO O 250, Chapter X, Change 1	DOE Directives System	
ORO O 350, Chapter III, Change 3, Attachment 1	Federal Labor Standards	
ORO O 360, Chapter II, Change 3, Attachment I	Personnel Selection, Qualification, and Training Requirements for DOE Nuclear Facilities	
ORO O 410, Chapter II, Change 3, Attachment 1	Management of Nuclear Materials	
ORO O 420, Chapter XVI	Fire Protection	Compliance: Implementation Plan (BJC/OR-2787) approved by ORO/DOE, 06/14/2007
ORO O 440, Chapter IV, Change 5, Attachment 1	Radiation Protection of the Public and the Environment	

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Requirement	Description	Compliance Status & Notes
ORO O 440, Chapter V, Change 4, Attachment 1	Employee Concerns Management System	
ORO O 450, Chapter I, Change 5, Attachment 1	General Environmental Protection Program	Implementation Assumptions same as DOE O 450.1, Change 2
ORO O 470, Chapter VII, Change 5, Attachment 1	Protection and Control of Safeguards and Security Interests	Clarification: DOE M 470.4-2, Change 1, Physical Protection is not in the BJC Contract
ORO O 470, Chapter IX, Change 5, Attachment 1	Control and Accountability of Nuclear Materials	
ORO O 530, Chapter III, Change 6, Attachment 1	Accounting	
ORO O 550, Chapter II, Change 1, Attachment 1	Foreign Travel Authorization	

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
ACGIH	American Conference of Governmental Industrial Hygienists - Threshold Limit Values (Most current version) (IA - Professional judgment of IH will be used to select the appropriate exposure standard, e.g. TLVs, AIHA WEELs and NIOSH RELs)	
ANSI/ANS-8.1-1983, R88	Nuclear Criticalily Safety in Operations with Fissionable Materials Outside Reactors.	
ANSI/ANS-8.3	Criticality Accident Alarm System	
ANSI/ANS-8.5	Use of Borosilicate - Glass Raschig Rings as a Neutron Absorber in Solutions of Fissile Material	
ANSI/ANS-8.7	Guide for Nuclear Criticality Safety in the Storage of Fissile Materials.	
ANSI/ANS-8.15	Nuclear Criticality Control of Special Actinide Elements	
ANSI/ANS-8.17	Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors	
ANSI/ANS-8.19	Administrative Practices for Nuclear Criticality Safety	
ANSI/ANS-8.20	Worker Nuclear Criticality Safety Training	
ANSI/ANS-8.21	Use of Neutron Absorbers in Nuclear Facilities Outside Reactors	
ANSI/ANS-8.22	Limiting and Control of Moderators	
ANSI/ANS-8.23	Emergency Planning and Response	
ANSI/ASHRAE 62	Ventilation	
ANSI A1.5	Safety Requirements for Material Hoists	
ANSI A10.31	Construction and Demolition - Digger Derricks Safety Requirements (As applicable to Design, Construction, Inspection & Maintenance only)	
ANSI/ASME A17.1	Safety Code for Elevators and Escalators	
ANSI/ASME A17.2.1	Inspectors Manual for Electric Elevators	
ANSI/ASME A17.2.2	Inspectors Manual for Hydraulic Elevators	
ANSI/ASME A17.3	Existing Elevators and Escalators	
ANSI/ASME A17.5	Elevator and Escalator Electrical Equipment	
ANSI B30.2	Over Head and Gantry Cranes	
ANSI B30.5	Mobile and Locomotive Cranes	
ANSI B30.10	Hooks	

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description	Compliance Status & Notes
ANSI B30.11	Monorails & Under Hung Cranes	
ANSI B30.16	Overhead Hoists	
ANSI B30.20	Below the Hook Lifting Devices	
ANSI B30.21	Manually-Operated Hoists	
ANSI/ASME B31	National Boiler Inspection Code	
ANSI B56.6	Rough Terrain Forklift Trucks	
ANSI C2	National Electrical Safety Code (NESC)	
ANSI N323-1978	Radiation Protection Instrumentation Test and Calibration	
ANSI Z49.1	Safety in Welding and Cutting	
ANSI Z117.1	Safety Requirements for Confined Spaces	
ANSI Z136.1	Safe Use of Lasers (1993 Version)	
ANSI Z358.1	Emergency Eyewash and Shower Equipment	
ANSI Z535.1	Safety Color Code (IA - Applicable only to ETTP TSCA Incinerator and Central Neutralization Facility)	
ASME B&PV Code	Boiler and Pressure Vessel Code	
ASTM 496-90	Standard Specification for the In-Service Care of Insulating Gloves and Sleeves	
ASTM 1236-89	Visual Inspection of Electrical Protective Rubber Products (for use as implementation guidance)	
ATSSA	Uniform Traffic Control Devices (for use as implementation guidance)	
IADC	Drilling Manual (for use as implementation guidance)	

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description
NFPA 1	Fire Prevention Code NFPA 1, Fire Prevention Code, with the following IAs: Sections 1-3(4), 1-4.2, and 1-8 do not apply The Governing Authority described in section 1-4.1, for the purposes of this requirement, is to be the BJC General Manager. This Governing Authority is to designate a qualified individual to serve as the AHJ for all facilities over which BJC, or its subcontractors, have responsibility. This appointment will be in writing. Section 1-4.10 shall be amended to allow DOE to direct BJC to secure the scene of any accident or fire, and to turn the scene and all evidence over to an investigation team to be designated by DOE. In this code, the term "public" is to mean all BJC employees, all BJC subcontractors, and all other co-located workers and visitors who are present at a facility for which BJC has responsibility. In this code, the term "owner" is to mean the BJC facility manager. In this code, the term "operator" is to mean the BJC building operator. Where NFPA 25 and 72 are referenced, the inspection, test, and maintenance frequencies listed in those standards shall not apply, instead, the frequencies listed in the document titled, "Oak Ridge Operations Office Fire Prevention and Protection Implementation Guides" shall be used. For fire hazards not addressed by Fire AHIs, the AHJ will apply the applicable NFPA standard(s). Fire prevention or response elements may be modified, reduced, or eliminated when justified by an evaluation that demonstrates an equivalent level of protection or an acceptably low risk to personnel and the environment. Such modification, reduction or elimination of protection shall be approved by the DOE-ORO authority having jurisdiction (AHJ) for fire protection matters.
NFPA 10	Portable Fire Extinguishers
NFPA 16A	Installation of Closed Head Foam Water Sprinkler Systems
NFPA 30	Flammable and Combustible Liquids Code
NFPA 37	Stationary Combustion Engines and Gas Turbines
NFPA 43D	Storage of Pesticides
NFPA 45	Standard on Fire Protection for Laboratories Using Chemicals (IA - for laboratories only)
NFPA 51B	Standard for Fire Protection in Use of Cutting and Welding Processes (IA - Fire Watchers are responsible for the safety of the worker(s) performing the hot work and the facility, including the requirement to maintain line-of-sight with the worker(s) during hot work operations.)
NFPA 55	Compressed and Liquefied Gases in Portable Cylinders
NFPA 70	National Electric Code
NFPA 70E	Electrical Safety Requirements for Employee Workplaces

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description
NFPA 80A	Exterior Fire Exposures (IA - This standard will be used by qualified fire protection engineers to determine minimum spacing between structures to minimize the risk of exposure to fires for all new installations. The requirements of this standard will not be applied to existing (at the time of these WSS) structures.
NFPA 90B	Installation of Warm Air Heating and Air Conditioning
NFPA 101	Life Safety Code
NFPA 101A	Alternative Approaches to Life Safety
NFPA 111	Stored Electrical Energy Emergency and Standby Power Systems
NFPA 214	Water - Cooling Towers
NFPA 221	Fire Walls and Fire Barrier Walls
NFPA 299	Protection of Life and Property From Wildfire
NFPA 318	Protection of Cleanrooms
NFPA 430	Liquid and Solid Oxidizers
NFPA 481	Production, Processing, Handling and Storage of Titanium
NFPA 482	Production, Processing, Handling and Storage of Zirconium
NFPA 485	Lithium Metal Storage, Handling, Processing, and Use
NFPA 495	Explosive Materials Code (IA - Chapter 1; Chapter 2, except Section 2.3 and 2.5, modified as follows: personnel who perform or supervise use of explosives will meet the qualifications and other requirements of Sections 2-2, 2-4, 2-6, 2-7, and 2-8; Chapter 6, except Section 6-7, modified as follows: reference Section 6-7.2, all magazines containing explosive materials shall be opened and inspected at maximum of 7 days; Chapter 7, except Sections 7-2 and 7-5.3, modified as follows: reference Section 7-1.3.1, loading and firing shall be performed or supervised only by a person possessing the qualifications found in Sections 2-2, 2-4, 2-6, 2-7, and 2-8; and Chapter 8, except Sections 8-1 and 8-2.)
NFPA 505	Powered Industrial Trucks including Type Designations, Areas of Use, Maintenance and Operation
NFPA 780	Lightning Protection (IA - Applicable only to the TSCA Incinerator)
NFPA 801	Facilities Handling Radioactive Materials
NFPA 820	Fire Protection in Wastewater Treatment and Collection Facilities
NFPA 1141	Planned Building Groups Systems
NFPA 8502	Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers
NIOSH	Work Practice Guide for Manual Lifting
SFPC	Standard Fire Prevention Code (SFPC) (IA - Applicable only to the ETTP TSCA Incinerator).
SBCCI	Standard Building Code

BASELINE LIST OF REQUIRED COMPLIANCE DOCUMENTS

List B

Requirement	Description
Authorization Agreements	For facilities designated in writing by the Department of Energy, Oak Ridge Operations (DOE ORO), an Authorization Agreement (AA) will be prepared and submitted to ORO using their written expectations and requirements and maintained as a record document.
Chemical Detonation Activities	IA - the Activity Hazard Assessment (AHA) for handling and transport of shock-sensitive waste will determine the personal protective equipment (PPE) and packaging requirements and will be based on chemical properties. A work package will specify the controls necessary to segregate facilities, vehicle traffic, and personnel from the shock-sensitive waste and will be based on overpressure calculations and fragment distances. Transport will only occur when inclement weather is not anticipated. Equipment such as lifting devices, vehicles, etc. will be inspected daily while in use to prevent mechanical failure. Shock-sensitive waste will be transported in an explosive carrier that is inspected and certified annually according to 49 CFR 396.17-23. A walkthrough will be conducted prior to transport to ensure slip, trip, and fall hazards are controlled.
Facility Safety	For Nuclear Category 2 and 3 facilities, the requirements of 10 CFR 830 Subpart B will be applied to the documentation and implementation of facility safety, including: 1) categorization 2) documentation of safety bases, 3) un-reviewed safety question process, 4) documented safety analyses, 5) technical safety requirements, 6) preliminary documented safety analyses, and 7) DOE approval of the safety bases For radiological facilities, hazards will be identified, categorized, and evaluated. Safety Requirements will be identified consistent with DOE P 450.4. Hazards and hazard controls will be described in documents such as: Health and Safety Plans, Auditable Safety Analyses, Process Hazard Analysis, Risk Management Plan, or Environmental Impact Statement. Safety requirements (controls) will be recorded in the appropriate safety documentation. For non-nuclear, non-radiological facilities safety analysis, safety requirements, and change control may be satisfied by the following: (1) complying with 29 CFR 1910.120 and 29 CFR 1926.65 requirements for Safety and Health Programs, Work Plans, Health and Safety Plans (HASPs) and Emergency Response Plans; (2) deriving safety requirements (controls); and (3) addressing public safety, as well as worker safety, in the Safety and Health Program, Work Plans, HASPs, and Emergency Response Plans. For activities subject to an authorization basis, configuration control will be maintained to ensure that activities remain within the approved authorization basis. If outside the authorization basis, the change shall be approved at a level consistent with the original authorization basis approval.
Memorandum	5/14/1996 - Subject: Revised Policy on EM Sample Management - To: B. Dempsey, OR, From: Richard J. Guimond, Assistant Surgeon General, USPHS; Principal Deputy Assistant Secretary for Environmental Management (EM-76) (Murray:3-7644)

PART III
SECTION J – LIST OF DOCUMENTS, EXHIBITS
AND OTHER ATTACHMENTS

APPENDIX F

2.1 Facilities transitioned to National Nuclear Security Administration and Office of Science

The following facilities will be transitioned to NNSA and OS when responsibility for Newly Generated Waste is transferred from the Contractor or at such earlier date as may be mutually agreed to by NNSA, OS, and Environmental Management (EM).

Table 2.1 - Facilities transitioned to National Nuclear Security Administration and Office of Science

Item	Area Name or ID	Description	Nuclear Facility Category/ Hazard Category	Comments.
1*	9616-6, 9616-7, 9616-8	West End Treatment Facility (WETF)	Radiological Low	Transfer to NNSA
2*	9616-7NE	Groundwater Treatment Facility	Radiological Low	Transfer to NNSA
3*	9983–BC through BY 9983-FJ, -FU, and –FV	Ancillary Facilities to WETF	Other Industrial Other Industrial	Transfer to NNSA
3*	9624	Environmental Support Facility	Radiological Moderate (Pending)	Transfer to NNSA
4*	9401-5 and 9722	Uranium Chip Oxidation Facility	Radiological Moderate	Transfer to NNSA
5*	9623 and 9409-11	Central Pollution Control and Mercury Treatment Facility, and Plating Rinsewater Treatment System	Radiological Low	Transfer to NNSA
6*	9720-32	Nondestructive Assay Facility	Radiological Low	Transfer to NNSA
7*	9720-59	PCB/Mixed Low Level Waste Storage Facility	Radiological Moderate	Transfer to NNSA
8	7651, 7652, 7653 and 7654	Hazardous Waste Operations Group (HWOG)	Radiological Moderate & High	Transfer to OS
9	7661, 7662, 7666A, 7668, 7670	Ancillary Facilities to HWOG	Other Industrial Other Industrial	Transfer to OS
10	7659 and 7667	Leaking Gas Cylinder and Chemical Detonation Facilities	Other Industrial Moderate	Transfer to OS
11	7827	Retrievable Shielded Dry Well Facility (empty)	Category 3 Other Industrial	Transfer to OS

Notes: Nuclear facility category and hazard category are based on current conditions and may change. * Marked items and associated items on the next page were transferred to NNSA effective October 1, 2005.

Additional List of Facilities Transferred to NNSA

Building Designation	Description
Building 9422-21	WETF NPDES Station
East of Building 9616-6	WETF Effluent Basins
CPCF Effluent Retention Basins	Out of Service Concrete Basins
Liquid Storage Facility (LSF)	Bear Creek Burial Grounds Groundwater Seep Collection
Building 9720-80	Ancillary Facility to LSF
Building 9983-CA	Ancillary Facility to LSF
East End Mercury Treatment System (EEMTS)	Groundwater Treatment Unit Within Building 9201-2
Building 9422-22	East End Volatile Organic Contaminant Plume Treatment System (EEVOC)
Building 9401-4	Radioactive Waste Baler Facility
Building 9720-92	Ancillary Facility to Building 9401-4
Boundary Control Station Shed	Ancillary Facility to Building 9401-4
Building 9720-9	PCB/Mixed Waste Storage Warehouse
Building 9983-FC	Ancillary Facility to Building 9720-9
Building 9720-28	PCB Waste Storage Warehouse
Building 9720-25	Waste Storage Warehouse
Building 9720-31	RCRA/Mixed Waste Storage Warehouse
Building 9811-1	Oil Dike 8 Mixed Waste Storage Warehouse (w/lithium)
Building 9983-FL	Ancillary Facility to Building 9720-31
Building 9983-HA	Ancillary Facility to WETF and ESF
Building 9720-58	Ancillary Facility to Waste Treatment Operations

PART III

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX G

REPORTING REQUIREMENTS CHECKLIST

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U.S. DEPARTMENT OF ENERGY

REPORTING REQUIREMENTS CHECKLIST

1. PROGRAM/PROJECT TITLE	2. IDENTIFICATION NUMBER
EM Accelerated Closure Project	

3. PARTICIPANT NAME AND ADDRESS

Bechtel Jacobs Company, LLC

4. PLANNING AND REPORTING REQUIREMENTS

	Frequency
A. General Management	
Management Plan	
☐ Status Report	
☐ Summary Report	
B. Milestone Reporting	
☒ Milestone Schedule/Plan	O
☒ Milestone Schedule/Status	M
C. Performance Measurement	
☒ Management Control System Description (EVMS)	O
☒ WBS Dictionary	O
☐ Index	
☐ Element Definition	
☒ Cost/Schedule Performance Reports	M, Q
☒ WBS	M
☐ Function	
☒ Baseline	M
☒ Baseline Update	O, A

	Frequ
D. Fee	
☒ Provisional Fee	Q
☒ Earned Fee	F
E. Technical	
☒ Technical Progress Report	M
☒ Final for Approval	A,I
☒ Completion Reports	A,I
	A
☒ Interim for each subproject	A
☒ Final for ETTP, MV, BOP, & LW	A,I
X Close-out Plan, F-5	F

5. FREQUENCY CODES

A – As Required
C – Change to Contractual Agreement
F – Final (end of effort)
D -- Daily
BM – Bi-Monthly
M - Monthly
O - Once After Award
Q - Quarterly
S – Semi-Annually
X – With Proposal/Bid/Application or with Significant Changes
Y – Yearly or Upon Renewal of Contractual Agreement

6. SPECIAL INSTRUCTIONS (ATTACHMENTS)

☐ Report Distribution List/Addresses
☐ Reporting Elements
☐ Due Dates
☐ Analysis Thresholds
☐ Work Breakdown Structure
☐ Other _____

7. PREPARED BY (SIGNATURE AND DATE)	8. REVIEWED BY (SIGNATURE AND DATE)

REPORT DISTRIBUTION LIST

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Report Description	Driver	Frequency
Computerized Accident/Incident Reporting System Injury/Illness Reporting	DOE Order 231.1	Monthly
ES&H Funded & Unfunded Compliance Activities Spreadsheet & Executive Summary	COR need a formal request or get DOE CFO access to IPABS database.)	Annually
FFA Document Status Report	Client Request	Monthly
Remediation Effectiveness Report		Annually
Conference Costs	DOE N 110.3	Quarterly
Erroneous Payments	DOE Directive – DOE-02-0233	Quarterly
Quarterly Report on Receivables Due From the Public	DOE Accounting Handbook DOE 0-534.1	Quarterly
Collection of Delinquent Interagency Receivables	DOE Accounting Handbook DOE 0-534.1	Quarterly
Budget Updates – Intra Office Work – Program 82	DOE Accounting Handbook DOE 0-534.1	Quarterly
Budget Call Inputs	DOE 5500	Annual
45 Day Termination Notices – RI Tenants, telecommunications	DOE/ORFSC	Monthly
60 Day Termination Notices – RI Tenants, telecommunications	DOE/ORFSC	Monthly
Telecommunication Aging Schedule – RI Tenants	DOE/ORFSC	Monthly
D&D Estimate	Energy Policy Act of 1992	Monthly
Financial Plan Requests	DOE ORO P&B (CF-A-3006)	Monthly
Summary Profile	DOE ORO P&B/BJC	Weekly
Baseline & Funding Change Proposals	BJC/DOE (BJC-PC-1004; CFA-3006)	Weekly
Nuclear Materials Classified Financial Reporting	DIMS Reporting – DOE Accounting Handbook/DOE ORDER 534.1	Quarterly
International Transaction	DOE (ORFSC) DOE Order 534.1	Quarterly
Financial Reporting (MARS)	DOE (ORFSC) MARS Reporting – DOE Accounting Handbook/DOE Order 534.1	Monthly
Travel Cost Summary	DOE Letter	Quarterly
Personnel by Program	DOE-ORO Human Resources Request	Quarterly
Functional Cost	DOE FMSIC/Congress	Annually
Economic Analysis	DOE (No Legal requirement)	Annually
Site Usage Calculation	DOE	Annually
Disclosure Statement Update	Public Law 100-679(41U.S.C.422) 48CFR99	As Needed
Property, Plant, and Equipment (Note5)	DOE Accounting Handbook	Annually
Financial Accounting Standards 4 Disclosure (YN)	Financial Accounting Standards #4	Annually
Letter of Credit	DOE Procedure – DOE Accounting Handbook	Monthly
Certificate of Deposit	DOE Procedure – DOE Accounting Handbook	Monthly
Financial Accounting Standards 106 Disclosure	DOE Statement of Financial Accounting Standards #106	Annually
FAS 87 Disclosure	DOE Statement of Financial Accounting Standards #87	Annually
FAS 4 Disclosure (YN)	Financial Accounting Standards #4	Annually
Transportation Bills (DOE-Order 534.1)	General Services Administration/Wash.	Quarterly

	D.C.	
Project Status Review	H-1.3 (a)	Monthly
Project Execution Reporting (PBS Level)	H-1.3 (a)	Quarterly
Gold Chart Performance Metrics	H-1.1 & H-1.3	Monthly
Release Site Facility Actuals Report	H-1.1 & H-1.3	Monthly
Waste Volume Actuals Report	H-1.1 & H-1.3	Monthly
DOE Direct Data Collection	H-1.1 & H-1.3	Monthly
DOE Direct Cost Reports	H-1.1 & H-1.3	Monthly
PMCP Reports for input to PARs	H-1.1 & H-1.3	Monthly
IPABS Spring Data Call	H-1.1	Annually
IPABS Fall Data Call	H-1.1	Annually
Baseline Update	H-1.3 & H-1.4	O, A
Update of the Site Treatment Plan for Mixed Wastes on the Oak Ridge Reservation	State of Tennessee Commissioners Order	Annually
Semiannual Progress Report for the Site Treatment Plan	State of Tennessee Commissioners Order	Semiannually
Mixed Waste Inventory Report	State of Tennessee Commissioners Order	Semiannually
Status Report of Inventory and Disposition of Radioactive PCB Wastes on the ORR	ORR PCB FFCA	Semiannually
Annual Report on Inventory and Disposition of Radioactive PCB Wastes on the ORR	ORR PCB FFCA	Annually
Aircraft operations		Quarterly
Shipment forecast	EM-1 Memo dated 27 June 02	Bimonthly
Shipment tracking report	EM-1 Memo (Standing Order #4A) from Paul Golan dated 21 March 03	Daily
Pollution Prevention Program Plan	DOE Order 450.1; Tennessee Hazardous Waste Reduction Act	Annual
Annual Report on Waste Generation and Pollution Prevention Progress (SEN-37 Report)	Secretary of Energy Notice 37; NRDC Settlement Agreement	Annual
RCRA Reports (P2 Input to Annual Report of Hazardous Waste Activities)	RCRA; Tennessee Hazardous Waste Reduction Act	Annual
Annual Hazardous Waste Reduction Progress Report	Tennessee Hazardous Waste Reduction Act	Annual
Toxic Chemical Release Inventory (TRI Report)	EPCRA	Annual
Affirmative Procurement Report	RCRA 6002; EO 13101	Annual
"Annual" Subcontracting Goals	H-17	Prior to the beginning of each Fiscal Year
Risk Mgmt Plan shall be developed and provisions made for routine reporting and updating of the Plan	H-1.2 (m)	By September 30, 2003 and update annually
Submit the OREMACP reflecting negotiated SOW, target cost, target schedule and funding profile	H-1.2 (a)	Within 60 days of execution of the contract modification
Public Involvement Plan	CERCLA	Updated as necessary
Develop a Salary Increase Plan	H-25, App B. 3.2.2 d	Annually
Preliminary Assessment/Site Investigation (PA/SI)	CERCLA	By September 30, 2005
Submit an annual expenditure report		Annually

DOE-F3220.8	H-25, App B, 3.2.2.d (6)	
Conduct a benefits value study	H-25, APP B, 4.a	Every two years
DOE and Contractor will agree on the companies to be used in benefits value study. DOE will receive a copy of study	H-25, APP B, 4.b	Every two years
A cumulative report showing all employees loaned, along with total days loaned and services provided	H-25, App B, 7.4	Annually
Site Safeguard and Security plan shall be reviewed and updated annually	DOE O 470.1,Att. 1, pg I-4, (d)(2)	Annually
Submit annual Implementation and Compliance Report. Certify annually to CO that no change in FOCI	DOE O 470.1 Att. 1, pg. VI-3, 5.1.b	End of each year of operation
Annual inventory must be conducted	DOE M 471.2-1(c), paragraph ii, 45 c	Annually
Final accounting and disposition of Government property. Submit inventory schedules covering all items of Government Property not consumed in performing this contract or delivered to the Government	I-104 (i)	Contract completion
Furnish a chart showing the names, duties, and organization of key personnel to be employed in connection with the work	I.110 (a)	As required
Submit to CO Documentation of System for review and approval	I.115 (e)	One time
Review and update for DOE approval, safety performance objectives, performance measures, and commitments	I.115 (e)	Annual
Contractor shall report the above items by the form VETS-100 and shall submit VETS-100 by no later than Sept. 30 of each year	I.44 (b) and (c)	Annually
In connection with this contract disclose in writing the contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5	I.62 (a) (1)	One time
Report ionizing radiation exposure data summaries to the Radiation Records Repository for each monitored person	O 231.1 Chg. 2, Att. 6	Annually
Report total work-hours and vehicle usage by organization	O 231.1 Chg. 2, Att. 3	Quarterly
Report annual estimates of property valuation by organizations	O 231.1 Chg. 2, Att. 1	Annually
A summary of environmental data to characterize site environment management performance	O 231.1 Chg. 2, Att. 12	Annually
Submit to CO a certificate of possession or non-possession	M 471.2-1C Page II-77	Upon completion or termination of contract

Section J
Appendix H

SERVICES FOR PADUCAH AND PORTSMOUTH

The Contractor will provide administration of the Multiple Employer Pension Plan (MEPP) and the Multiple Employer Welfare Arrangement (MEWA) at Paducah and Portsmouth for the eligible employees of four DOE prime contractors involving environmental remediation and infrastructure services.

1.0 Administration of Selected Benefit Plans and Services

During transition, the Contractor will support, on a daily basis, the benefit administration functions for the four Prime Contractors for new hires, terminations, retirements, status changes, benefit inquiries, benefit and contribution changes, and open enrollment related to the MEPP and MEWA for only those employees defined in this paragraph. After transition, the Contractor will assist the four Prime Contractors' human resource managers in responding to grandfathered employees' questions concerning the MEPP and MEWA. The Contractor's support activities will be limited to Paducah and Portsmouth "grandfathered employees' as that term is defined in Appendix B of the contract. "Non-grandfathered, union employees" as the term is defined in applicable collective bargaining agreements signed by Contractor will be eligible for the MEWA only. Non-union, non-grandfathered employees will not be part of this scope.

The Contractor is authorized to maintain and staff service center offices in Paducah and Portsmouth as required to accomplish the scope of work.

The Contractor will establish a process for communicating with the employees of the four Prime Contractors. Written employee communications designed to announce and explain benefit offerings and changes will be developed. The Contractor will coordinate on-site employee meetings and question and answer sessions with the four Prime Contractors.

DOE has included provisions in the four Prime Contracts that require the contractors to:

- Enter into a Service Agreement with Contractor for administration of the MEPP and MEWA.
- Become co-sponsors of the MEPP, MEWA (including retiree medical plans) no later than 90 days after award of their contracts.
- Cooperate with Contractor in the administration of benefits, including providing in a timely fashion all information requested by Contractor.

- Comply with all applicable laws including but not limited to the Internal Revenue Code, Employee Retirement Income Security Act (including implementing corrective actions resulting from Annual Non-discrimination testing), and state laws.

The Contractor is not responsible for the timeliness of data submission by the four Prime Contractors or participating subcontractors and administration of severance on behalf of the four Prime Contractors or subcontractors.

The Contractor is authorized to obtain the service of a Third Party Administrator (TPA) who may also serve as a professional fiduciary as and to the extent determined appropriate by Contractor for benefit and investment administration or for management of the fiduciary liability relating to the benefits and pension plans.

1.1 Multiple Employer Pension Plan (MEPP) and Multiple Employer Welfare Arrangement (MEWA)

The applicable MEPP and MEWA plans to be administered by Contractor for the four Prime Contractors include only the following plans:

- Bechtel Jacobs Company LLC Pension Plan for Grandfathered Employees.
- Retiree Medical Benefits Plan for Employees of Bechtel Jacobs Company LLC and Subcontractors.
- Health and Welfare Benefit Plan for Employees of Bechtel Jacobs Company LLC and Subcontractors (which will include medical and prescriptions, vision, dental, life insurance and long-term disability).

The following plans are **excluded** from the Contractor's scope of work in Portsmouth and Paducah under this Section:

- ERISA Section 125 Cafeteria Plan (Health Care Flexible Spending Account, Dependent Care Flexible Spending Account).
- Short term disability.
- Bechtel Jacobs Company LLC Severance Plan for Grandfathered Employees once hired by one of the four contractors.
- Any 401K Plan for Grandfathered and non-grandfathered Employees that are hired by the four new contractors.
- Bechtel Jacobs Company LLC Equalization Retirement Income Plan for Grandfathered Employees.

- Bechtel Jacobs Company LLC Supplemental Retirement Income Plan for Grandfathered Employees.

- Employee Assistance Program and Business Travel Accident and Special Accident Insurance

1.2 Fiduciary Liability

The Contractor will obtain fiduciary liability insurance in the amount and form that it deems necessary and appropriate to cover this work.

The Contractor is authorized to obtain the service of a TPA who will also serve as a professional fiduciary as and to the extent determined appropriate by Contractor for management of the fiduciary liability relating to the benefits and pension plans. The TPA may perform any of the actions specified in this section as being performed by the Contractor.

1.3 Applicability of Existing Contract Requirements

DOE Order 350.1 and Appendix B will apply to the scope in this Appendix unless superceded by the more specific terms and conditions. The Benefits Value Study will include this scope pursuant to the Order and Appendix G. All costs incurred may be subject to audit, shall be reasonable, and shall be accounted for separately. The scope of this effort is excluded from the Guarantee of Performance from Contractor's parent companies under Clause H-15.

2.0 Closeout and Transfer of Responsibility

No later than September 30, 2008, the Contractor will be relieved of all responsibility for the scope of work defined in this Appendix. DOE is responsible for identifying another entity to assume these responsibilities no later than September 30, 2008.

The transfer of responsibility at that time will also include any ongoing or future litigation involving issues associated with the administration of the pension and benefits plans.

3.0 Financial Management and Fees for Administration Services at Portsmouth and Paducah

3.1 Funding and Cost Recovery

The Contractor will recover costs and fee for providing these benefits by invoicing and collection from the new contractors via a chargeback process. The Contractor is authorized the use of letter of credit in order to incur and seek

reimbursement from the four Prime Contractors. In the event of non-payment or delinquent payment, debt will be referred to DOE for collection.

3.2 Allowable Costs and Funding

All incremental costs and liabilities associated with, related to, or arising from providing this benefit administration support to DOE and its contractors, subcontractors and eligible employees at Portsmouth and Paducah will be allowable costs and will be fully reimbursed without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. Those costs and liabilities arise out of the performance of this contract scope include, but are not limited to, reasonable cost incurred:

As a result of a reasonable interpretation by the Contractor of any MEPP or MEWA requirement or benefit.

Relating to plan amendment or termination, with prior approvals as required. Relating to administrative processing of benefits, and any related corrective actions that might be required or appropriate to address routine or non-routine processing errors.

Relating to administration and payment or defense of any Employee Retirement Income Security Act (ERISA) claims.

For administration of the pension and benefits plans, including Pension Benefit Guarantee Corporation (PBGC) premiums, annual audit costs and other appropriate expenses.

For funding of retiree medical costs, including as appropriate, funding of a Voluntary Employee Benefits Association Trust for such costs.

For pension funding, including funding at termination basis levels as required by ERISA or otherwise.

In performing a Health Insurance Portability Assessment Act (HIPAA) assessment.

For Third Party Administrator.

For fiduciary liability insurance and professional fiduciary support.

3.3 Fees for Administration of Services

The amount of fixed fee will be established prior to the start of the fiscal year and payable monthly through the chargeback system within thirty (30) days of submission of the Contractor's written request.

Both parties may mutually agree to renegotiate terms or fee based on significant changes to the MEPP/MEWA administrative scope.

The fee amount is subject to the provisions under the "Disputes" clause, but is not subject to reduction under Clause H.6, "Conditional Payment of Fee – Environment, Safety, and Health and Safeguarding Restricted Data and Other Classified Information and Materials."

PART III

SECTION J – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX I

DAVIS-BACON ACT WAGE DETERMINATION

General Decision Number: TN080003 07/04/2008 TN3

Superseded General Decision Number: TN20070004

State: Tennessee

Construction Type: Heavy

Counties: Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson and Wilson Counties in Tennessee.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/08/2008
1	04/11/2008
2	05/02/2008
3	06/20/2008
4	06/27/2008
5	07/04/2008

BOIL0453-003 01/01/2008

	Rates	Fringes
BOILERMAKER	$ 26.23	13.72

CARP0074-002 05/01/2004

HAMILTON COUNTY

	Rates	Fringes
CARPENTER (Including Form Work)	$ 18.31	5.10

CARP0223-001 05/01/2008

CHEATHAM, DAVIDSON, DICKSON, MONTGOMERY, ROBERTSON, RUTHERFORD, SUMNER, WILLIAMSON, AND WILSON COUNTIES

	Rates	Fringes
CARPENTER (Including Form Work)	$ 20.20	8.36

ELEC0175-003 06/01/2007

HAMILTON COUNTY

	Rates	Fringes
ELECTRICIAN	$ 26.24	1.6%+5.54

ELEC0175-005 12/01/2003

EXCEPT: SHELBY COUNTY

	Rates	Fringes

Linemen.....$ 22.05 2.45+14.5%

ELEC0429-005 09/01/2003

Davidson

	Rates	Fringes
ELECTRICIAN.....	$ 21.60	6.63

ELEC0474-005 12/01/2007

SHELBY COUNTY

	Rates	Fringes
Linemen.....	$ 25.30	16.5%+4.75

ELEC0760-002 06/04/2006

ANDERSON (EXCLUDING OAKRIDGE CITY), BLOUNT, KNOX, LOUDON, SEVIER AND UNION COUNTY

	Rates	Fringes
ELECTRICIAN.....	$ 20.39	1.25%+7.71

ELEC0934-001 06/01/2006

CARTER, HAWKINS, SULLIVAN, UNICOI AND WASHINGTON COUNTIES

	Rates	Fringes
Electricians:		
Electrical contracts $1,000,000 and over.....	$ 18.15	3.90+19%
Electrical contracts less than $1,000,000.....	$ 15.77	3.90+13%

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* ENGI0369-003 05/01/2008

CHEATHAM, DAVIDSON, DICKSON, FAYETTE, MADISON, MONTGOMERY, ROBERTSON, RUTHERFORD, SHELBY, STEWART, SUMNER, TIPTON, WILLIAMSON AND WILSON COUNTIES

	Rates	Fringes
Power Equipment Operator Bulldozer Operator, Hydraulic Crane Operator, and Dump Truck Operator.....	$ 22.72	8.85

ENGI0917-006 05/01/2008

ANDERSON, BLOUNT, CARTER, HAMILTON, HAWKINS, KNOX, LOUDON, MARION, SEVIER, SULLIVAN, UNICOI, UNION AND WASHINGTON COUNTIES

	Rates	Fringes
Power equipment operators:		

Bulldozer Operator and Dump Truck Operator	$ 21.48	9.30
Hydraulic Crane Operator	$ 23.45	9.30

SUTN2003-010 09/10/2003

	Rates	Fringes
Cement Mason/Concrete Finisher	$ 10.00	
Laborer, Unskilled	$ 10.14	
OPERATOR: Power Equipment		
Backhoe	$ 13.77	1.46
Excavator	$ 12.50	
Farm Tractor	$ 9.50	
Grader	$ 14.00	
Loader	$ 15.76	4.95
Pipelayer	$ 10.93	
TRUCK DRIVER	$ 11.48	1.21

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the

Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

SECTION J - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

APPENDIX J

LIST OF GOVERNMENT PROPERTY