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**PART I - THE SCHEDULE**

**SECTION B  
SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 ITEMS BEING ACQUIRED**

The Contractor shall support a Transport System(s) and, as appropriate, the Technical Support and Maintenance to transport Tritium Producing Burnable Absorber Rods (TPBARS) as defined in the Statement of Work (SOW). This includes all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incidental to, the performance and providing the following items of work:

Item 1 - See Section C, Performance-Based Statement of Work

Item 2 - Reports in accordance with Section J, "Reporting Requirements Checklist" Form DOE F 1332.1.

(Offerors are requested to propose on two different price schedules A & B, listed as clauses B.2 and B.3. Only one price schedule will be selected for award and included in the final contract. The selection will be based on which method is in the best interest of the Government.)

[End of Clause]

**B.2 PRICE SCHEDULE A (FIXED PRICE, FIXED-UNIT RATE AND TIME & MATERIAL)**

**PROCUREMENT OF THE USE OF TRANSPORT SYSTEM(S) AND TECHNICAL SUPPORT SERVICES**

(Base Period -- 10 Years)

CLIN = Contract Line Item

ID/IQ = Indefinite Delivery / Indefinite Quantity

DPLH = Direct Productive Labor Hours

CLIN	Requirement	Quantity	Total Price
001	Preliminary Cask Design (Fixed Price)	1 ea	\$_____
002	Preliminary Trailer Design (Fixed Price)	1 ea	\$_____
003	Preliminary Safety Analysis Report of Packaging (PSARP) (Fixed Price)	1 ea	\$_____
004	Safety Analysis Report of Packaging (SARP) and Certificate of Compliance (CoC) Application (Fixed Price)	1 ea	\$_____

		<u>Estimated DPLH</u>	<u>Fully Loaded Fixed Rate</u>	<u>Estimated Amount</u>
005	Resolution of all Certifying Official Comments, Approval of SARP, And Issuance of CoC (ID/IQ ordered by T&M task order)	4300 _____	\$ _____	\$ _____

		<u>Estimated Quantity (No. of days)*</u>	<u>Fixed Unit Price (Day Rate)</u>	<u>Estimated Total Price</u>
006	Transport System Usage (Fixed Unit Price)(Requirements-- ordered by task order)	980 _____	\$ _____	\$ _____

\*Number of days transport system will be at or enroute to or from TVA or DOE facilities.

		<u>Estimated DPLH</u>	<u>Fully Loaded Fixed Rate</u>	<u>Estimated Amount</u>
007	Technical Support (ID/IQ ordered by T&M task order)	4960 _____	\$ _____	\$ _____

		<u>Estimated DPLH</u>	<u>Fully Loaded Fixed Rate</u>	<u>Estimated Amount</u>
008	Certification Renewal Application (ID/IQ ordered by T&M task order)	1040 _____	\$ _____	\$ _____

009	Reporting Requirements - Quality Assurance Plan - Milestone Schedule - Security Plan - Subcontracting Plan - See Section J, Reporting Requirements		Not Separately Priced	
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**OPTION 1: One Five - Year Period**

		<u>Estimated Quantity (No. of days)*</u>	<u>Fixed Unit Price (Day Rate)</u>	<u>Estimated Total Price</u>
010	Transport System Usage (Fixed Unit Price)(Requirements-- ordered by task order)	980 _____	\$ _____	\$ _____

\*Number of days transport system will be at or enroute to or from TVA or DOE facilities.

		<u>Estimated DPLH</u>	<u>Fully Loaded Fixed Rate</u>	<u>Estimated Amount</u>
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011	Technical Support (ID/IQ ordered by T&M task order.)	2260 _____	\$ _____	\$ _____
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012	Reporting Requirements - Quality Assurance Plan - Milestone Schedule - Security Plan - Subcontracting Plan - See Section J, Reporting Requirements	Not Separately Priced		
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**OPTION 2**

013 Purchase Transport System(s)  
(Includes a 12-month supply of consumables spare parts.)

Extended	Number of Transportation System Services Ordered prior to Purchase	Quantity	Purchase Unit Price	Price
	_____	TBD	\$ _____	
	\$ _____			
	_____		\$ _____	
	\$ _____			
	_____		\$ _____	
	\$ _____			

Estimated	Estimated DPLH	Fully Loaded Fixed Rate	Amount
014 Maintenance (ID/IQ ordered by T&M task order)	1600 _____	\$ _____	
\$ _____			

[End of Clause]

**B.3 PRICE SCHEDULE B (FIXED PRICE, FIXED-UNIT RATE AND TIME AND MATERIAL)**

**PROCUREMENT OF THE TRANSPORT SYSTEM(S), TECHNICAL SUPPORT & MAINTENANCE**

(Base Period - 10 Years)

<u>CLIN</u>	<u>Requirement</u>	<u>Quantity</u>	<u>Total Price</u>
00A	Preliminary Cask Design	1 ea	

	\$ _____ (Fixed Price)			
00B	Preliminary Trailer Design \$ _____ (Fixed Price)	1 ea		
00C	Preliminary Safety Analysis Report of Packaging (PSARP) (Fixed Price) \$ _____	1 ea		
00D	Safety Analysis Report of Packaging (SARP) and Certificate of Compliance (CoC) Application (Fixed Price)	1 ea		
		Estimated	Fully Loaded	
	Estimated	<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00E	Resolution of all Certifying Official Comments, Approval of SARP, And Issuance of CoC \$ _____ (ID/IQ ordered by T&M task order)	4300 _____	\$ _____	
00F	Procurement of Transport System(s) \$ _____ (includes a 12-month supply of consumable spare parts) (Fixed Unit Price)	TBD	\$ _____	
		Estimated	Fully Loaded	
	Estimated	<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00G	Technical Support (ID/IQ ordered by T&M task order) \$ _____	3360 _____	\$ _____	
		Estimated	Fully Loaded	
	Estimated	<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00H	Maintenance (ID/IQ ordered by T&M task order) \$ _____	1600 _____	\$ _____	
		Estimated	Fully Loaded	
	Estimated	<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00I	Certification Renewal Application (ID/IQ ordered by T&M task order) \$ _____	1040 _____	\$ _____	

00J Reporting Requirements Not Separately Priced

- Quality Assurance Plan
- Milestone Schedule
- Security Plan
- Subcontracting Plan
- See Section J, Reporting Plan

**OPTION 1: One Five - Year Period**

		Estimated	Fully Loaded	
Estimated		<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00K	Maintenance (ID/IQ ordered by T&M task order) \$_____	6400 _____	\$_____	

		Estimated	Fully Loaded	
Estimated		<u>DPLH</u>	<u>Fixed Rate</u>	<u>Amount</u>
00L	Technical Support (ID/IQ ordered by T&M task order) \$_____	660 _____	\$_____	

00M Reporting Requirements Not Separately Priced

- Quality Assurance Plan
- Milestone Schedule
- Security Plan
- Subcontracting Plan
- See Section J, Reporting Plan

[End of Clause]

**B.4 TIME-AND-MATERIAL AND LABOR-HOUR ADMINISTRATION**

(Applicable to CLINs 005, 007, 008, 011, 00E, 00G, 00H, 00I, 00K, 00L)

- (a) The Contractor shall provide personnel at the hourly rates stated in the Price Schedule. The Government can order any number of Direct Productive Labor Hours (DPLH) required to support the Statement of Work and the quantity of man-hours shown are estimated amounts only and may vary during the period of performance.
- (b) If the effort under this contract is determined to be applicable to the Service Contract Act, then the wage rates included in the fully burdened hourly rates are not subject to revision unless required by the Service Contract Act. Any adjustment required by the Service Contract Act will be in accordance with Department of Labor (DOL) Wage Determinations. Any revised DOL Wage Determination will be included in Section J of this contract. The indirect costs, general and administrative expense, and profit applied to the hourly rates will not be changed if wage rates are adjusted as a result of the Service Contract Act. The fully loaded rates are subject to the clause entitled, "Economic Price Adjustment."

- (c) In the event, the contractor is required by the contracting officer to acquire materials and supplies, the reimbursement will be in accordance with FAR 52.232-7. Any travel will be reimbursed in accordance with the Federal Travel regulations and will be authorized by the Contracting Officer or any other duly authorized representative.
- (d) In accordance with FAR 52.246-6, Inspection--Time-and-Material and Labor-Hour, the Government may require the contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in FAR 52.246-6, paragraph h, the cost of replacement or correction shall be determined under FAR 52.232-7, Payments Under Time-and-Material and Labor-Hour Contracts, but the hourly rates for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit.

[End of Clause]

**B.5 OBLIGATION OF FUNDS (INCREMENTAL FUNDING)**

The total amount currently obligated to this contract is N. It is anticipated that from time to time additional funds will be obligated to this contract until the total contract price of \_\_\_\_\_ is obligated. It is estimated that this amount is sufficient to cover contract performance through \_\_\_\_\_.

[End of Clause]

**B.6 OPTION(S)**

(a) Options To Extend The Term Of The Contract.

This contract shall be extended at the unilateral option of the Government in accordance with FAR 52.217-9 set forth in Section I. The term of the base period and options are set forth below:

<u>Contract Period</u>	<u>Term</u>
Ten Year Base Period	Date of initial contract execution through 10 years
Option 1	5 years after Base Period

(b) Option To Purchase Transport System. (Listed as Option 2 and applicable to CLIN 0013 only.)

The Government has the unilateral option to purchase a transport system(s) at any time during the period of the contract in accordance with the Clause located in Section H entitled, "Transport System Purchase Option."

[End of Clause]

**B.7 LIMITATION OF GOVERNMENT'S OBLIGATION**

This clause is structured to define the limitation of the Government's obligations in three sections. The first section addresses fixed price Contract Line Items (CLINs). The

second section addresses time and material and fixed-rate line items. The third part is applicable to all line items.

(a) Government's Obligations under Fixed Price Line Items.

(Applicable to CLINs 001, 002, 003, 004, 006, 010, 00A, 00B, 00C, 00D, 00F)

(1) The Contractor agrees to perform or have performed work on the Fixed Price CLINs up to the point at which, in the event of termination of this contract pursuant to the clause hereof entitled "Termination for Convenience of the Government," the total amount payable by the Government (including amounts payable in respect of subcontracts and settlement costs), pursuant to the clause thereof, would in the exercise of reasonable judgement by the contractor approximate the total amount at the time obligated to the contract. The Government shall not be obligated in any event to pay or reimburse the contractor in excess of the amount from time to time obligated to the contract, anything to the contrary in the clause hereof entitled "Termination for Convenience of the Government" notwithstanding.

(2) In the event funds obligated are considered by the Contractor to be inadequate to cover the work to be performed until the date set forth in the Schedule, or an agreed date in substitution thereof, the Contractor shall notify the Contracting Officer in writing when within the next fifteen (15) days the work will reach a point at which, in the event of termination of this contract pursuant to the clause hereof entitled "Termination for Convenience of the Government," the total amount payable by the Government (including amounts payable in respect to the subcontracts and settlement costs), will approximate 85 percent of the total amount then obligated to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance to the above date or an agreed substituted date. The Contractor shall, fifteen days prior to the date above written or agreed substitute date, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period, as may be specified in the contract or otherwise agreed to by the parties. If, after such later notification, additional funds are not obligated by the date above written or by an agreed date in substitution thereof, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date or the date set forth in the request, whichever is later, pursuant to the provisions of the clause of this contract entitled "Termination for Convenience of the Government."

(3) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(b) Government's Obligations under Time and Material and Fixed Unit Price Line Items.

(Applicable to CLINs 005, 007, 008, 0011, 00E, 00G, 00H, 00I, 00K, 00L)

(1) It is estimated that the total payment to the Contractor by the Government for the performance Time and Material and Fixed Unit Price CLINs of this contract will not exceed the estimated amount set forth in the schedule, and the Contractor agrees to use the best efforts to perform the work specified in the schedule and all obligations under this contract within such estimated amount.

(2) The sum presently available for payment and obligated to this contract, the items covered thereby, and the period of performance which it is estimated the obligated amount will cover are specified in the schedule. It is anticipated that, from time to

time, additional funds will be obligated to this contract up to the full estimated amount. When additional funds are obligated from time to time for continued performance of the work, the parties will agree as to the applicable estimated period of contract performance which will be covered by the funds, and the contract schedule will be amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination (Cost Reimbursement)" the total amount paid and payable by the Government pursuant to the clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time obligated to this contract. The Contractor will not be obligated to continue performance of the work beyond that point.

(3) The Government will not be obligated to make any payment to the Contractor, including payment in respect to subcontracts and termination settlement costs, in excess of the total amount from time to time obligated to this contract. However, when and to the extent that the total amount obligated to this contract has been increased, any invoice or voucher with respect to a period prior to the increase, and in excess of the amount previously obligated, will be paid as if the invoice or voucher were for a period after the increase in amount obligated.

(4) If funds obligated are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the schedule, the Contractor will notify the Contracting Officer in writing within the next 30 days if the work will reach a point at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination (Cost Reimbursement)," the total amount paid and payable by the Government pursuant to the clause will approximate 85 percent of the total amount then obligated to the contract. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the schedule. The Contractor will, 30 days prior to the end of the period specified in the schedule; advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required, on the basis of the obligation of performance stated above, for the timely performance of the work under the contract for such further period as may be specified in the schedule or otherwise agreed by the parties. If, after such notification, additional funds are not obligated by the end of the period set forth in the schedule, or by an agreed substitute date; the Contracting Officer will, upon written request of the Contractor, terminate this contract on that date, or on a date to be specified in the request; on which the Contractor, in the exercise of reasonable judgment, estimates that he will have discharged his obligation to perform as stated above; whichever is later, pursuant to the provision of the clause of this contract entitled "Termination (Cost Reimbursement)."

(5) This clause will be applicable and paragraph (c) of this contract entitled "Payments under Time-and-Materials and Labor-Hour Contracts," inapplicable until such time as an amount equal to the total estimated amount of this contract set forth in the schedule is obligated to this contract, and hereafter paragraph (d) of the clause of this contract entitled "Payments Under Time-and-Materials and Labor-Hour Contracts," will be applicable and this clause inapplicable.

(6) Nothing in this clause will affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination (Cost Reimbursement)."

(c) Government's Obligations under all CLINS of this contract

(1) When additional funds are obligated from time to time for continued performance of the work under this contract, the parties will be covered by such funds. The applicable provisions of this clause will apply in like manner to the additional obligated funds and substituted date and the contract will be amended accordingly.

(2) The Government may at any time prior to termination obligate additional funds for this contract and, with the consent of the Contractor, after notice of termination, may rescind the termination in whole or in part, and obligate additional funds for this contract.

(3) For the purpose of this clause, the obligations specified in the schedule will not be decreased without the consent of the Contractor.

[End of Clause]

## **B.8 ECONOMIC PRICE ADJUSTMENT**

### **(a) Applicability of Economic Price Adjustment**

An Economic Price Adjustment (EPA) will apply to fully loaded fixed rates for DPLH for the following CLINs: 005, 007, 008, 011, 00E, 00G, 00H, 00I, 00K, 00L.

### **(b) General Provisions**

The adjusted price shall be made by a contract modification to be executed bilaterally by the Contractor and the Contracting Officer. However, if bilateral agreement cannot be reached, the Government retains the right to unilaterally make this determination in price adjustment and such determination shall be subject to the Disputes Clause of the contract. During this process, the Contractor shall continue performance pending agreement on, or determination of, any adjustment.

In the event that the applicable index named below is discontinued or materially changed, the parties shall bilaterally agree to utilize another index which will be similar in scope and content to the original index. In the event the parties cannot agree on such an index, the Government retains the right to unilaterally make the determination of an appropriate index and such determination shall be subject to the Disputes Clause of this contract.

### **(c) Economic Price Adjustment Process:**

EPA determinations for the CLINs indicated above will be made beginning the year in which a CLIN is first utilized. The base year of EPA determinations shall be the calendar year of the contract award. The prices subject to adjustment shall be adjusted upward or downward on an annual basis to reflect changes in the index from the base year to the year that support is provided. The adjustment will be calculated annually during TBD (month of contract award.)

The adjustment shall be based on changes in the TBD (name of index.)

The formula for calculating the EPA is as follows:

$$\frac{\text{Index in T2} - \text{Index in T1}}{\text{Index in T1}} \times \text{Price in T1} = \text{Annual Adjustment} + \text{Price for T1} = \text{Price for T2}$$

Where:

T1 = Time period 1 (The time period from which you obtained the price/cost that is to be the base of the estimate.)

T2 = Time period 2 (The time period for which you intend to estimate price/cost)

[End of Clause]

## **SECTION C**

### **DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

#### **C.1 STATEMENT OF WORK**

##### **TPBAR TRANSPORT SYSTEM (S) In Support of the COMMERCIAL LIGHT WATER REACTOR PROJECT**

#### **1.0 INTRODUCTION**

The Department of Energy (DOE) requires a Transportation System(s), Technical Support and Maintenance (as necessary) for the shipment of up to 4,000 radioactive irradiated Tritium Producing Burnable Absorber Rods (TPBARs) per year. Shipments shall be from the Watts Bar Nuclear Plant and/or the Sequoyah Nuclear Plants, Units 1 and 2 to the Tritium Extraction Facility (TEF) at Savannah River Site (SRS).

#### **2.0 BACKGROUND**

The Commercial Light Water Reactor (CLWR) Project was established by the Secretary of Energy in November 1995. The mission of the CLWR Project is to establish, by FY 2003, the irradiation capability and operations systems necessary to produce tritium in a commercial reactor so that tritium can be delivered to the nuclear weapons stockpile by FY 2006. This acquisition will ensure that Transport System(s) sufficient to ship the requisite number of irradiated TPBARs to support the mission is provided to DOE by March 2005.

#### **3.0 SCOPE**

The contractor shall obtain either a DOE or NRC Certificate of Compliance, and provide a Transport System(s) to DOE to support the transport of irradiated TPBARs from the TVA reactors to the TEF and to support a single shipment of up to 32 Lead Test Assembly TPBARs from the Idaho National Engineering and Environmental Laboratory (INEEL) to the Test Area North (TAN) facility. The contractor shall provide Technical Support and Maintenance, as applicable, to DOE at the Reactor Facilities, the TEF and TAN facility.

#### **4.0 DEFINITIONS**

10 CFR 71 - Title 10 United States Code of Federal Regulations, Part 71, Packaging and Transportation of Radioactive Materials.

Basket - The structure, if needed, provided with the Transport Cask by the contractor, which configures the internal geometry of the cask to be compatible with the items to be shipped. The Basket will support the Consolidation Container(s), as defined below, containing the irradiated TPBARs. The same or equivalent Basket will be used for the Lead Test Assembly (LTA) shipment from the TAN to the TEF.

Certificate of Compliance (CoC) - A certificate issued by Department of Energy (DOE) or

Nuclear Regulatory Commission (NRC), as appropriate, approving for use with specified limitations a specific packaging for quantities of radioactive materials exceeding A1/A2 quantities as defined in DOT and NRC regulations.

Consolidation Container - The support structure that contains and supports the irradiated TPBARs during transport. The Consolidation Container accepts the irradiated TPBARs from several irradiated assemblies and will fit into a cask cavity that is capable of carrying a square package of up to 8.45 inches on a side, and a length of up to 164 inches. Each Consolidation Container will contain up to 300 irradiated TPBARs. The Consolidation Container(s) fits within the Basket.

Maintenance - Any activity that must be performed either to the components of the Transport System(s) or the authorization basis documents, to retain the system ready for use in compliance with the terms of the Certificate of Compliance (CoC). Routine Maintenance activities for certified packages are described in Chapter 8 of the related SARP.

Reactor Facilities - The reactors in which irradiation of the irradiated TPBARs is performed. These reactors presently include Watts Bar Nuclear Plant, Unit 1 near Spring City, Tennessee, and Sequoyah Nuclear Plant Units 1 and 2 near Soddy Daisy, Tennessee.

Safety Analysis Report for Packaging (SARP) - A document that provides a comprehensive technical evaluation and review of the design, testing operational procedures, maintenance procedures, and quality assurance program. The purpose of the SARP is to demonstrate compliance with the regulatory safety standards established by the NRC for approving packages and issuing certificates of compliance.

Technical Support - Any activity required of the Transport System Contractor to support the operation (in compliance with the Certificate of Compliance) of the Transport System(s) by DOE. The scope of these activities includes, but is not limited to, the following: providing systems experts at user facilities, review of local operating procedures to ensure understanding and safe operations, and providing responses to operating questions that may occur during Transport System use, and provide assistance for development of site-specific operating procedures for leak testing and initial loading and unloading of the Transport Cask.

Test Area North (TAN) - Facility located on the Idaho National Engineering and Environmental Laboratory site near Idaho Falls, Idaho.

Transport Cask - The DOE or NRC certified transport packaging that provides containment and shielding for the contents and primary protection of the public, workers, and environment. Cask containment is to provide all barriers to tritium release. This definition also includes all associated external personnel protection barriers, impact limiters, and protective shields, if any.

Transport System -- The Transport Cask and dedicated trailer, along with associated handling equipment (yokes, lifting devices, etc.) necessary for operating the Transport Cask.

Tritium Extraction Facility (TEF) - A facility currently under construction, located at the Savannah River Site near Aiken, South Carolina.

Tritium Producing Burnable Absorber Rods (TPBAR) -- Stainless steel rods that contain target material in which tritium is produced during irradiation. TPBARs of interest to this RFP will have been irradiated in a Commercial Pressurized Water Reactor.

The Tennessee Valley Authority (TVA) - Owner and Operator of the previously defined Reactor Facilities.

## 5.0 REFERENCED DOCUMENTS AND FIGURES

### DOCUMENTS:

(See [http://www.oakridge.doe.gov/procurement/cur\\_sol.html](http://www.oakridge.doe.gov/procurement/cur_sol.html))

- (1) CLWR-TEF TPBAR Acceptance Criteria, Project S-6091, Commercial Light Water Reactor - Tritium Extraction Facility (CLWR-TEF), Document No. M-TRT-H-00006, Revision 1, Westinghouse Savannah River Company, Savannah River Site, South Carolina, July 1998.
- (2) Letter from W. W. Laity (PNNL) to S. M. Sohinki (DOE/DP-62) entitled "CLWR: TPBAR Tritium Releases Assumptions for the EIS TPBAR," TTQP-99-064, February 10, 1999.
- (3) Unclassified TPBAR Tritium Releases, Tritium Target Qualification Project, TTQP-1-091, Revision 3, Pacific Northwest National Laboratory, Richland, Washington, November 17, 2000. (REV 4 is dated 1/15/01)
- (4) TPBAR Source Term, Radionuclide Concentrations, and Decay Heat, Tritium Target Qualification Project, TTQP-1-050, Revision 2, Pacific Northwest National Laboratory, Richland, Washington, March 1998.
- (5) Source Terms for the LTA Hold-down Assembly, Tritium Target Qualification Project, TTQP-1-084, Revision 1, Pacific Northwest National Laboratory, Richland, Washington, June 1998.
- (6) Report on the Evaluation of the Tritium Producing Burnable Absorber Rod Lead Test Assembly, TTQP-6-022, PNNL-11419, Rev. 1, Pacific Northwest National Laboratory, Richland, Washington, March 1997.
- (7) Unclassified Bounding Source Term and Decay Heat for the Production TPBAR, Tritium Target Qualification Project, TTQP-1-111, Revision 1, Pacific Northwest National Laboratory, Richland, Washington, July 1999.
- (8) Source Term Quantification Letter Report, SNL-D-98-14, Revision 0, Sandia National Laboratories, Albuquerque, New Mexico, July 1998.
- (9) Semi-Trailers Employed in the Highway Transport of Weight-Concentrated Radioactive Loads- Design, Fabrication, and Maintenance, ANSI N14.30-1992
- (10) TPBAR Post Irradiation Shipping and Handling Analyses ,TTQP-1-2044, Rev. 1, Pacific Northwest National Laboratory, Richland, Washington, May 2000.
- (11) System Design Description for: Commercial Light Water Reactor Production Cask, G-SYD-H- 00118, Rev. 1, Westinghouse Savannah River Company, Aiken SC, August, 2000.
- (12) Packaging Review Guide for Reviewing Safety Analysis Reports for Packagings, UCID-21218, Rev. 2, Lawrence Livermore National Laboratory, October 1999.
- (13) Tennessee Valley Authority Watts Bar Nuclear Plant Chemistry Manual, Chapter 3.01, System Chemistry Specifications, Rev. 28, June 29, 2000.
- (14) DOE Orders:  
470.1                      Safeguards and Security Program, 9/95

472.1B	Personnel Security Activities, 3/97
M472.1-1	Personnel Security Manual, 5/98
142.1	Unclassified Foreign Visits and Assignments, 7/99
5632.1C	Protection and Control of Safeguards and Security Interests, 7/94
M5632.1C-1	Manual for Protection and Control of Safeguards and Security Interests, 4/96
471.2A	Information Security Program, 3/97
M471.2-1B	Classified Matter Protection and Control Manual, 1/99
232.1A	Occurrence Reporting and Processing of Operations Information, 7/97
M475.1-1	Identifying Classified Information, 5/98

FIGURES:

Figure 1	TPBAR
Figure 2	Consolidation Container
Figure 3	LTA insert
Figure 4	TPBARs on Baseplate
Figure 5	Baseplate Assembly Container

## 6.0 TECHNICAL REQUIREMENTS

6.1 The Contractor shall obtain either a DOE or NRC Certificate of Compliance for a Transport System(s), and provide a Transport System(s) to DOE. The Contractor shall

- (1) Identify a Transportation System(s) by selecting (i) an existing packaging that can be certified "as is;" (ii) an existing packaging that can, with modifications, be certified; or (iii) proposed a design that can be built and certified. In all cases, the following must be delivered:
  - a) Preliminary cask design (CLIN 001, 00A)
  - b) Preliminary trailer design (CLIN 002, 00B)
- (2) Prepare the SARP in accordance with either the DOE Packaging Review Guide for Reviewing Safety Analysis Reports for Packagings [Document 12], or NRC Regulatory Guide 7.9, and
  - a) deliver a Preliminary SARP (CLIN 003, 00C),
  - b) submit the SARP to the Regulatory Authority with an application for certification (CLIN 004, 00D), and
  - c) as necessary, resolve all certifying official comments, and issue final SARP to all Transport System users for shipment of TPBARs in the Transport Cask. Users include DOE, DOE Contractors, and TVA located at the sites discussed in this SOW. (CLIN 005, 00E);
  - d) Provide for the updating and maintenance of the SARP.
- (3) Maintain a Transport System(s) as required in the SARP and act to keep the safety basis documentation current, ensuring regulatory compliance during the period of certification. As a result, enable the shipment of up to 4000 TPBARs per year per the established operating schedule provided to the Contractor following contract award. (CLIN 007, 008, 00G, 00H, 00I)

### 6.2 TPBAR Shipments

The Contractor shall provide a sufficient number of Transport System(s) to transport up to 4000 irradiated TPBARs per year from the Reactor Facilities to the TEF for a base period starting on or about July 2005. Additionally, the Contractor shall provide the Transport System to transport up to 32 irradiated LTA TPBARs from the TAN facility at the INEEL to the TEF at the Savannah River Site on or about November 2005. (Applicable to CLINs 006; 00F)

6.2.1. The Contractor shall provide Technical Support for development of site-specific operating procedures for leak testing and initial loading and unloading of the Transport Cask. The Contractor shall provide a Transport System(s) and staff to provide Technical Support for trial loading/unloading of the cask and handling capabilities at the Reactor Facilities, the TEF, and the TAN facility. The trial loading/unloading is scheduled to occur at TEF on or about February 2005, and at the Reactor Facilities on or about April 2005. The trial loading/unloading will occur at the TAN facility on or about June 2005. The Contractor shall identify and provide any additional pre-planning activities that are appropriate for this effort. (Applicable to CLINs 006, 007; 00F, 00G)

6.2.2. The Contractor shall provide and maintain all necessary equipment associated with a Transport System(s). Also, the Contractor will supply all required specialized tools to close, seal, drain and evacuate the Transport Cask. All handling equipment furnished by the Contractor for use at the Reactor Facilities must meet NRC requirements, including NUREG 0612, Heavy Loads Handling, and must be compatible with the reactor plant spent fuel pool requirements. All handling equipment furnished by the Contractor for use at the TAN must be compatible with the TAN LTA TPBAR storage area requirements. [See Document 13] Equipment shall be provided for both the trial loading / unloading operations associated with the use of the transport system. (Applicable to CLINs 007; 00H)

6.2.3. Shipment logistics assumptions are as follows:

- a) Shipments shall occur only from one production Reactor Facility at a time. A given Reactor Facility will ship all Consolidation Containers of TPBARs on hand prior to another Reactor Facility using a Transport System.
- b) Not more than one Transport System at a time shall be present at any of the involved facilities: INEEL, TAN, TVA Reactor Facilities, or the TEF.
- c) Shipments shall occur dependent upon the TVA reactor operating schedules, with each shipping campaign beginning following a reactor outage and TPBAR consolidation into Consolidation Containers.
- d) Not more than four Consolidation Containers may be shipped in a single shipment.
- e) It is estimated that the optimum round trip cycle time per shipment is 14 days.

6.3. If DOE purchases a Transport System(s), the contractor shall provide DOE with, at a minimum, 12 month's worth of Transport System consumables (seals, gaskets, etc.) and provide operating and maintenance procedures and maintenance schedules in accordance with the packaging approval documentation. (Applicable to CLIN 013; 00H)

6.4. The U.S. Department of Energy (DOE) will be the shipper of record for the transport of the TPBARs.

6.5. DOE will perform one or more audits at the Contractor's office to evaluate the Contractor's performance and SARP development. At least two weeks pre-notification will be provided for all audits. .

6.6. Transport System(s) Requirements

The TPBARs will be contained in a Consolidation Container during transport. The consolidation container may contain up to 300 TPBARs and will support the TPBARs during loading, unloading, and normal transport conditions. The contractor shall provide a sufficient number of Transport System(s), including Transport Cask(s) certified for tritium transport and the technical services necessary for the transport of TPBARs. The Contractor shall provide Technical Support services to DOE at the Reactor Facilities, the TEF, and (for a single shipment only) the TAN facility. The Technical Support will be for development of site-specific operating procedures for leak testing, loading, and unloading of the Transport Cask(s). (Applicable to CLIN 001 through 006; 00A through 00F)

- 6.6.1 The Contractor shall provide a Transport System(s) in accordance with the established shipping schedule. The Contractor shall ensure that the trailer meets ANSI N 14.30 standards and Enhanced Commercial Vehicle Safety Alliance Inspection Criteria. (Applicable to CLINs 006, 00F)
- 6.6.2 The Contractor shall provide Transport Casks certified for shipment of the consolidated TPBARs. Figure 1 is an illustration of a typical TPBAR. Figure 2 is an illustration of the Consolidation Container. (Applicable to CLINs 003 through 006; 00A, 00C, 00D, 00E)
- 6.6.3 The interior cavity of the Transport Cask shall enable it to carry at least one, but not more than four, Consolidation Container(s). Each Consolidation Container may contain up to 300 TPBARs. There may, however, be a range in the actual number of TPBARs in a Consolidation Container. The Consolidation Container(s) fits within the basket (if necessary). The reference dimensions for the Consolidation Container is a rectangular parallelepiped with a square cross section, 8.45 in. on a side, and a length of up to 164 inches. A complete set of drawings for the Consolidation Container will be provided to the Contractor to enable performance of analyses supporting development of the SARP.
- 6.6.4 The Contractor will be responsible for obtaining and subsequently maintaining a packaging CoC from DOE or NRC for the shipment of contents specified in this section. (Applicable to CLINs 004, 005, 008, 00D, 00E, 00I)
- 6.6.5 For purposes of certification, the Contractor shall assume the following specifications bound the shipment of irradiated TPBARs contained in the Consolidation Container(s) referenced in 5.1.5:
- (1) Tritium (H-3) quantity of 1.2 g/TPBAR [Doc. 7];
  - (2) TPBAR radionuclide inventory at 30 days after reactor discharge specified in Table 3 of TTQP-1-111, Rev. 1 [Doc. 7];
  - (3) Gamma radiation source term for the TPBARs of 2.52 E13 photons/s/ TPBAR at 30 days following reactor discharge with the energy distribution specified in Table 5 of TTQP-1-111, Rev. 1 [Doc. 7];
  - (4) Gamma radiation source term for the hold-down assembly (baseplate) following reactor discharge specified in Table 8 of TTQP-1-111, Rev. 1 [Doc. 7];
  - (5) TPBAR crud source term specified in Table 2 of SNL-D-98-14, Rev. 0 [Doc. 8];
  - (6) Transportation of a maximum of two water-logged pre-failed TPBARs in a shipment [Doc. 8];
  - (7) Tritium release rates from intact TPBARs via permeation through the cladding, from TPBARs that failed during a transportation event, and from TPBARs that failed prior to being inserted into the cask as specified in TTQP-99-064 [Doc. 2] and TTQP-1-091, Rev. 0 [Doc. 3];
  - (8) Decay heat of 3.22 Watts/TPBAR at 30 days after reactor discharge specified in Table 4 of TTQP-1-111, Rev. 1 [Doc. 7];
  - (9) TPBAR weight of 1200 gm/TPBAR specified in Table 2 of TTQP-1-111, Rev. 1 [Doc. 7]; Mechanical limit: 50 g lateral and 60 g axial as specified in TTQP-1-2044, Rev.1 [Doc. 10]
  - (10) Thermal limit: 1050 degrees F (565 degrees C) specified in TTQP-1-091, Rev 2

[Docs. 2,3].

## 6.7 Technical Support Services

When requested, the Contractor shall provide a field representative to assist with loading, unloading, and leak testing of the Transport Cask. This will also include Technical Support the TAN facility, the Reactor Facilities, and the TEF for developing site-specific operating procedures for loading and unloading of the cask for initial shipments to and from the facilities within the first operating year of the contract. It is anticipated that up to two visits per facility may be necessary to ensure all interface requirements are addressed. After initial shipments, technical assistance will be on an as-needed basis. (Applicable to CLINs 007, 011; 00G, 00H, 00k, 00l)

## 6.8 Transport Cask Interface Requirements

6.8.1 The Transport Cask physical dimensions must be compatible with the Reactor Facilities. The reactor facility cask handling dimensions are:

### 6.8.1.1 Watts Bar Nuclear Plant, Unit 1:

Entrance to cask receiving area -	Width: 15 feet, 6 inches; Height: 20 feet
Cask receiving area -	Width: 25 feet; Length: 50 feet, 6 inches
Refueling floor hatch -	Width: 17 feet; Length: 67 feet, 6 inches
Initial setdown area -	Width: 12 feet; Depth: 19 feet, 9 inches
Cask loading access area shelf -	Width: 12 feet; Depth: 12 feet
Minimum cask travel path	
rigging height clearance -	Height: 29 feet, 7.2 inches
Cask decontamination area -	Width: 13 feet, 11 inches; Depth: 14 feet

### 6.8.1.2 Sequoyah Nuclear Plant, Units 1 and 2:

Entrance to cask receiving area -	Width: 16 feet; Height: 20 feet
Cask receiving area -	Width: 20 feet; Length: 45 feet
Refueling floor hatch -	Width: 17 feet, 6 inches; Length: 69 feet
Initial setdown area -	Width: 12 feet; Depth: 19 feet, 8 inches
Cask loading access area shelf -	Width: 12 feet; Depth: 12 feet
Minimum cask travel path	
rigging height clearance -	Height: 30 feet, 6 inches
Cask decontamination area -	Width: 14 feet; Depth: 14 feet

6.8.2 The Transport Cask physical dimensions must be compatible with the INEEL's Test Area North (TAN) Radioactive materials handling area (TAN 607 Hot Shop). The facility cask handling dimensions are:

### TAN 607 Hot Shop:

Entrance to cask receiving area -	Width: 28 feet; Height: 33 feet
Cask receiving area -	Width: 39 feet; Length: 68 feet; height: 40 feet.
Cask Handling Area (Hot Shop)-	Width: 51 feet; Length: 165 feet; height: 55 feet.
Maximum crane hook height-	approximately 10 feet less than the hot shop ceiling height

6.8.3 The Transport Cask physical dimensions must be compatible with the TEF. The limiting dimensions of the TEF cask receiving area are those of the truck bay rollup door

which is 10 feet in width and 15 feet in height. Other relevant information concerning the TEF and cask handling equipment will be provided to the Contractor as it becomes available.

6.8.4 All Transport Cask tiedowns, lifting yokes and other handling fixtures required for removal of the impact limiters, the cask lid, other components, and contents, as well as those associated with loading, unloading, and securing the cask, shall be provided. The items shall be compatible with the lifting equipment at the TAN facility, the Reactor Facilities, and the TEF. All lifting yokes and other handling fixtures shall conform to national standards and facility requirements for lifting components. All lifting yokes, slings and other handling fixtures which may be exposed to the reactor spent fuel pool water shall be compatible with pool water chemistry requirements.

6.8.5 The Transport Cask shall permit the remote lifting, handling, and unloading of the Consolidation Container(s) from the cask by the TEF handling equipment. Any fixtures and spacers used to locate the Consolidation Container(s) within the cask shall also be able to be removed using the TEF remote handling apparatus.

## 6.9 Transport Cask Preparation

6.9.1 The Transport Cask shall be capable of being drained of water, dried, and backfilled with an inert gas and leak tested at the Reactor Facilities. The cask shall also permit sampling of the cask atmosphere at the TEF prior to removal of the cask lid.

6.9.2 The interior of the Transport Cask must be able to be swiped. Although it normally will not go through a full decontamination process, the interior of the cask must be capable of being decontaminated, i.e. non-porous, smooth surfaces. The exterior surfaces of the cask shall be easy to decontaminate using routine methods. To the extent practical, the exterior surface of the cask shall be free of features that might accumulate or trap contamination such as cracks, crevices, and closely spaced components.

6.9.3 The Transport Cask must also be designed so that the loading and unloading portions of the transportation process meet the requirements of 10 CFR 20 including ALARA considerations.

## 6.10 Transport Cask Function in Transit

6.10.1 The Transport Cask must protect the LTA TPBARs and the Consolidation Container during the normal transport conditions and hypothetical accident conditions prescribed by 10 CFR 71.

6.10.2 The Transport Cask must protect the irradiated TPBARs and the Consolidation Container(s) during the normal transport conditions prescribed by 10 CFR 71.

6.10.3 The Transport Cask must protect the irradiated TPBARs and the Consolidation Container(s) during the hypothetical accident transport conditions prescribed by 10 CFR 71. Acceleration of the irradiated TPBARs should be limited to prevent failure of the TPBARs [10]. In addition, the maximum internal temperature of the cask during the hypothetical accident transport conditions shall not exceed 565°C (1050°F) [2,3].

## 6.11 Security Considerations (Applicable to CLINS 009, 012; 00J, 00M)

6.11.1 The contractor will be subject to the following DOE orders, as applicable: DOE Order 470.1, DOE Order 472.1B and M 472.1-1, DOE Notice and Policy 142.1, DOE Order 5632.1C and M 5632.1C-1, DOE Order 471.2A and M 471.2-1B, DOE Order 232.1A, and M475.1-1. The contractor will also be subject to TVA security requirements at TVA facilities.

6.11.2. Within 180 days following contract award, the Contractor will prepare and submit for approval to DOE a Security Plan. The Security Plan establishes and describes the physical, protective program and the measures in place for handling and transport of classified materials. The TPBARs are considered Confidential Restricted Data.

The plan shall define a personnel security program that assures only "cleared" personnel with a "need to know" shall have access to classified material. This part of the plan should describe the Safeguards and Security Awareness Program that defines and establishes the program to provide the required security briefings to maintain or terminate a DOE security clearance. DOE will review the plan and, within one month, will either approve the Contractor's plan or return it with comments. The Contractor will have two weeks to resolve DOE's comments and submit the revised plan for DOE approval. The Security Plan shall be approved before the Contractor can handle classified information or material.

**7.0 TECHNICAL AND PROGRAM REPORTS, PLANS, AND DOCUMENTS**

(Applicable to Method A CLINs 009, 012; 00J, 00M)

7.1 Base Period

Upon contract award, DOE will provide to the Contractor the work breakdown structure for the CLWR Tritium Project. Within 90 days following contract award, the Contractor will provide to DOE a Quality Assurance Plan that complies with 10 CFR 830, and a detailed schedule in Primavera Project Planner of the activities associated with the statement of work for inclusion into the CLWR Project Schedule. The Contractor schedule shall detail the activities up to and including the shipment of the first irradiated TPBARs. The Contractor shall also submit to the CLWR Office Annual Operating Plans (AOPs) for the time period up to the Transport Systems being available.

7.2. Option Period Deliverables:

Obtain or renew the Certificate of Compliance. As needed

**8.0 DELIVERABLES AND SCHEDULE**

<b>Transport System(s) and Technical Support</b>	<b>Date (On or About)</b>
Quality Assurance Plan (SOW, 7.1)	90 Days After Award
Detailed Milestone Schedule in Primavera Project Planner	90 Days After Award, monthly
Security Plan (SOW, 6.10)	180 Days After Award
Submit Preliminary Transport Cask Design	TBD
Submit Preliminary Trailer Design	TBD
Submit Preliminary SARP	TBD
Submit SARP and CoC Application	March 2002
Provide Technical Support for leak-testing	February 1, 2005

Provide a Transport System and Technical Support For trial loading and unloading at the TEF	February 1, 2005
Provide a Transport System and Technical Support for a trial Loading and unloading at the Reactor Facilities.	April 1, 2005
Provide a Transport System and Technical Support for a trial Loading and unloading at the TAN facility.	June 1, 2005
Provide CoC for Transport Cask	March 2005
Provide a Transport System to ship up to 32 LTA TPBARs from the TAN facility to the TEF.	November 2005
Provide sufficient number of Transport Systems to ship up to 4,000 irradiated TPBARs per year from the reactor facilities to the TEF for an initial five year shipping period.	July 2005 to Nov 2010
Obtain renewal of the Certificate of Compliance.	As needed
Provide ongoing Technical Support to the Reactor Facilities and the TEF.	As needed

Option Period:

<b>Transportation Support Services</b>	<b>Date (On or About)</b>
Provide sufficient Transport Systems to ship up to 4,000 irradiated irradiated TPBARs per year from the Reactor Facilities to the TEF for a five-year period. If the Transport Casks used during the Option Period are different than the packages used during the Base Period, provide a Transport System for a trial loading/unloading at the Reactor Facilities and the TEF.	December 2010 to December 2015

### **9.0 Measurement and Acceptance Criteria**

For the Preliminary Cask Design, Preliminary Trailer Design, and Preliminary SARP (CLINs 001, 002, 003, 00A, 00B, 00C), Attachment A to the SOW will be utilized to determine the acceptability of these deliverables.

For CLIN 00F-- the delivered Transport System(s)-acceptance will be based the delivery of a Transport System that has a CoC and meets the requirements of the SOW for a Transport System(s).

[End of Clause]

### **ATTACHMENT A DESCRIPTION OF MEASUREMENT / ACCEPTANCE CRITERIA**

Items included in the DOE technical review for acceptability of the Transport Cask Design,

Preliminary Trailer Design, and Preliminary SARP.

1. Does the provided information address how the deliverable meets the defined requirements?
2. Does the deliverable comply with the required regulatory and performance requirements?
3. Have adequate qualification testing requirements been established, meeting regulatory
4. Is sufficient justification provided to support the alternative selected?
5. Does the deliverable include consideration for unique physical or material properties?
6. Does the deliverable implement the stated requirements of the RFP?
7. Is the deliverable compatible with interfacing equipment, systems, facilities, and personnel?
8. Considering the life cycle operating environment does the equipment arrangement and spacing requirements provide adequate accessibility for maintenance, inspection, removal, or replacement?
9. Is sufficient detail provided to clarify construction, installation, and inspection methods and requirements?
10. Does the deliverable adequately address unique materials requirements for operating environments?
11. Does the deliverable include provisions to perform tests required to verify performance requirements and calculated values?
12. Do the deliverables documents include evaluation and selection for waste minimization and ALARA?
13. Do the deliverable documents include all the drawings necessary to operate the designed item; have they been identified, modified and / or created?
14. Does the design provide adequate provision for equipment lockout / isolation?
15. Do deliverable documents include all the procedures (operations, maintenance, engineering, support, etc.) necessary to operate the designed item? Have they been identified, modified and / or created?
16. Will additional training be required for operations, maintenance, engineering, and support staff?
17. Does the design involve use of hazardous chemical, local exhaust systems, non-ionizing radiation sources, biohazards, noise hazards, or other recognized non-radiological hazards?

## **C.2 REPORTS**

Reports shall be prepared and submitted in accordance with Section J, Attachment A, Reporting Requirements, and other clauses in the contract which specify reporting requirements.

[End of Clause]

## **SECTION D**

### **PACKAGING AND MARKING**

#### **D.1 PACKAGING**

Except for the Transport System(s), preservation, packaging, and packing for shipment or mailing of all work deliverable hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

[End of Clause]

#### **D.2 MARKING**

- (a) Except for the Transport System(s), each package, report or other deliverable shall be accompanied by a letter or other document which:
  - (1) Identifies the contract by number under which the item is being delivered.
  - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
  - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

[End of Clause]

#### **D.3 TRANSPORT SYSTEM(S)**

Preservation, packaging, and packing of Transport System(s) shall be in accordance with Section C., Statement of Work, and in compliance with all applicable United States transportation regulations.

[End of Clause]

**SECTION E**  
**INSPECTION AND ACCEPTANCE**

**E.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

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

<http://www.arnet.gov/far/>

**I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES**

NUMBER	DATE	TITLE
52.246-2	AUG 1996	INSPECTION OF SUPPLIES - FIXED-PRICE
52.246-4	AUG 1996	INSPECTION OF SERVICES - FIXED-PRICE
52.246-6	JAN 1986	INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR
52.246-16	APR 1984	RESPONSIBILITY FOR SUPPLIES

**E.2 INSPECTION**

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

[End of Clause]

**E.3 ACCEPTANCE**

Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated successors.

[End of Clause]

## SECTION F

### DELIVERIES OR PERFORMANCE

#### F.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://www.arnet.gov/far/>

#### I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	DATE	TITLE
52.242-17	APR 1984	GOVERNMENT DELAY OF WORK
52.247-34	NOV 1991	F.O.B. DESTINATION

#### F.2 52.211-11 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)

(Applicable to CLINs 006, 010, 00F)

- (a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of To Be Determined per calendar day of delay.
- (b) If the Government terminates this contract in whole or in part under the Default--Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.
- (c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default--Fixed-Price Supply and Service clause in this contract.

[End of Clause]

#### F.3 52.242-15 STOP-WORK ORDER (AUG 1989)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a

stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work 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 Default, or the Termination for Convenience of the Government, 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 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 the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

[End of Clause]

#### **F.4 TERM OF CONTRACT**

The term of this contract is for ten years. However, at the Government's sole discretion, this contract may be extended for one five-year option period.

[End of Clause]

## SECTION G

### CONTRACT ADMINISTRATION DATA

#### G.1 CORRESPONDENCE PROCEDURES

All correspondence submitted by the Contractor (except for invoices and reports) shall be subject to the following procedures:

- (a) Technical Correspondence. Technical correspondence concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.
- (b) Patents/Technical Data Correspondence. Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, USDOE, Post Office Box 2001, Oak Ridge, TN, 37831-8751, with an informational copy to the Contracting Officer and the COR.
- (c) Non-technical Administrative Correspondence. All correspondence, other than technical correspondence, shall be addressed to the Contracting Officer or Contract Specialist designated in ORO G25, with information copies of the correspondence to the DOE COR, and to the DOE Assistant Chief Counsel for Intellectual Property (where patent or technical data issues are involved).
- (d) Subject Line(s). All correspondence shall contain a subject line commencing with the contract number, as illustrated below:  
"SUBJECT: Contract No. [ ] (Insert the contract number) [ ] (Insert subject topic after contract number, e.g., "Request for subcontract placement consent)".

[End of Clause]

#### G.2 SUBMISSION OF VOUCHERS/INVOICES

- (a) The Contractor shall submit invoices in accordance with the FAR payment clause in Section I of the contract (unless prior written consent from the Contracting Officer for more frequent billing is obtained). The period of performance covered by the invoices should be the same as covered by any required monthly cost management reports.
- (b) The invoice (Standard Form 1034) should include a statement of cost or price for services rendered. This statement should include, as a minimum, a breakout by contract line item and task order (if applicable) of all services and/or items actually provided by the Contractor, both for the current billing period and cumulatively for the entire contract. The statement of cost or price must include a certification statement signed by a responsible official of the Contractor. The Contractor shall submit the invoice to the addressees prescribed below:

Original and one copy to:

U.S. Department of Energy  
Oak Ridge Operations Office  
Oak Ridge Financial Service Center

P.O. Box 6017  
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy  
Oak Ridge Operations Office  
ATTN: Contracting Officer's Representative  
(To be designated by separate letter)  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy  
Oak Ridge Operations Office  
ATTN: \_\_\_\_\_ Contract Specialist  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

- (c) For task order contracts, in addition to the above submission, the contractor shall submit one copy of each invoice to the designated contract technical monitor.

[End of Clause]

### **G.3 BILLING INSTRUCTIONS--TIME AND MATERIALS CONTRACT**

(Applicable to CLINs 005, 007, 008, 011; 00E, 00G, 00H, 00I, 00K, 00L)

- (a) These instructions are provided for use by Contractors in the preparation and submission of vouchers requesting reimbursement for work performed under time and material type contracts. Compliance with these instructions will reduce correspondence and other causes for delay to a minimum and will thus promote prompt payments to the Contractor.
- (b) Preparation of the Statement of Cost (See attached format)
- (1) Statement of Cost shall be completed, making due allowance for the Contractor's cost accounting system.
  - (2) For task order or work assignment contracts, the Contractor shall complete the Statement of Cost for each task order work assignment and a summary for the total invoiced cost.
  - (3) Costs claimed shall be only those recorded costs authorized for billing by the payment provisions of the contract.
  - (4) A separate Statement of Cost should be submitted for each task order/work assignment for claimed overtime costs. A copy of the Contractor's overtime request and Contracting Officer's approval must accompany the Statement.
  - (5) All claimed subcontractor costs shall be supported by attaching copies of the subcontractor's invoice with the same detail as outlined herein.
  - (6) The DPLH incurred during the current billing period must be shown and the DPLH Summary completed.
  - (7) The total profit billed, retainage amount, and available profit must be shown.
  - (8) The certification on the Statement of Cost must be signed by a responsible official of the Contractor.
  - (9) Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer



contract and that the costs included herein have been incurred, represent payments made by the Contractor except as otherwise authorized in the payments provisions of the contract, and properly reflect the work performed.

\_\_\_\_\_  
(Signature) (Title)

Name and address of preparer: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_ Telephone \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### **G.4 CONTRACTING OFFICER'S REPRESENTATIVE (COR)**

The Contracting Officer's Representative will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the Scope 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.

[End of Clause]

#### **G.5 CONTRACT ADMINISTRATION**

The contract will be administered by:  
U.S. Department of Energy

TBD

Written communication shall make reference to the contract number and shall be mailed to the Contract Specialist designated via separate correspondence to the above address.

[End of Clause]

## **G.6 CONTRACT TECHNICAL MONITOR**

The Contract Technical Monitor (CTM) may be designated by separate letter by the COR. The CTM assists the Contracting Officer Representative. The CTM is not authorized to change any of the terms and conditions of the contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract.

[End of Clause]

## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

#### H.1 CONSECUTIVE NUMBERING

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

[End of Clause]

#### H.2 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include:
  - (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.
- (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";
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (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 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 paragraph (b)(1) through (b)(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 "Changes" clause of the contract;

- (2) Advise the Contractor in writing within thirty (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--Alternate I."

[End of Clause]

### **H.3 MODIFICATION AUTHORITY**

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.

[End of Clause]

### **H.4 ORDERING PROCEDURE**

(Applicable to CLINs 005,006, 007, 008, 0010, 0011, 00E, 00G, 00H, 00I, 00K, 00L)

Performance under this contract shall be subject to the following ordering procedure:

- (a) The Contractor shall incur costs under this contract only in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.
- (b) From time to time during the period of performance of this contract, Task Orders will be approved in writing by the Contracting Officer to the Contractor designating (1) the task to be performed; (2) the schedule of performance; (3) authorized travel; (4) not to exceed estimate of cost and DPLH; and (5) any Government-furnished property. Such Task Orders will specify deliverables and required delivery dates. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, viewgraphs, and other forms of presentation as appropriate. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in the property schedules of this contract as well as in the individual Task Orders.
- (c) Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. A revision to a Task Order will be identified by a numeric designation following the existing Task Order number indicating the revision sequence.
- (d) The Contractor shall submit within ten (10) calendar days, after receipt of each Task Order issued by the Contracting Officer, a one-time Contractor Task Plan. The Task Plan is the Contractor's overall estimate for the completion of the Task Order and shall include the following:
  - (1) Date of commencement of work, and any necessary revision to the schedule of performance.
  - (2) Direct Productive Labor-Hours (DPLH), both straight and overtime, (if

authorized), on a monthly basis by applicable labor category, and the total DPLH, including those in paragraph (4) below, estimated to complete the task.

- (3) The travel and material estimate.
  - (4) An estimate for subcontractors and consultants; including the DPLH, if applicable.
  - (5) Estimated computer use time required, if applicable.
  - (6) Other pertinent information, indirect costs, consultants, interdivisional transfers, etc.
  - (7) The total estimated cost and fixed fee, if applicable, for completion of the Task Order.
- (e) The Contractor's Task Plan is subject to the approval of the Contracting Officer. If the approved Task Plan estimate of DPLH and dollars differ from the Task Order, a revised Task Order incorporating the approved Task Plan estimate of DPLH and dollars will be issued. After a Task Order is issued, if any revision becomes necessary to the estimated cost or level of effort, the Contractor shall promptly submit to the Contracting Officer a revised Task Plan with explanatory notes. Revised Task Plans submitted by the Contractor are subject to the approval of the Contracting Officer and a revised Task Order is required if a Revised Task Plan is approved.
- (f) Costs and DPLH shall be tracked by the Contractor for each task order. The contractor shall notify the Contracting Officer in writing whenever it has reason to believe that either the costs or DPLH it expects to incur under a task order in the next 60 days, when added to all costs or DPLH previously incurred, will exceed 75 percent of the total costs or DPLH designated on the task order.
- (g) Orders shall be issued for completion only within the TERM OF CONTRACT, unless unexercised options to extend the term are available to the Government. In that event, any task period of performance is considered provisional unless the TERM OF CONTRACT is extended.
- (h) The Contractor is not authorized to incur costs on Task Orders which are not in compliance with any of those clauses of the contract.

[End of Clause]

## **H.5 SMALL BUSINESS SUBCONTRACTING PLAN**

The Small Business Subcontracting Plan submitted by the Contractor for this contract, and approved by the Contracting Officer on \_\_\_\_\_ is, by reference, hereby incorporated in and made a material part of this contract. Any required revisions to the Plan shall be accomplished by contract modification.

[End of Clause]

## **H.6 SECURITY QUALIFICATIONS**

Clearance Requirements: Select contractor employees shall be "Q", "L" or "BAO" cleared. For employees requiring DOE "Q" or "L" security clearances, the contractor shall not employ anyone who is not a citizen of the United States. (Clearance-Access authorizations are granted by the DOE pursuant to Title 10, Code of Federal Regulations, Part 710.) Security Badges must be worn properly at all times while working at any of the DOE facilities.

Obtaining Clearances: Prior to submitting individuals for clearance, the contractor must screen individuals in accordance with an employee screening plan approved by the DOE Contracting Officer's Representative (COR). The certification by the contractor to

the COR of a favorable screening is required prior to employment. The screen shall include verification of identity, citizenship, previous employment and education and the results of credit and law enforcement checks. Clearances will be provided and paid for by DOE. The request for clearance and renewal of clearances must be justified based on actual job performance requirements.

Maintenance of Clearances: Security Badges will be furnished by DOE. Neither the contractor nor its employees shall ever reassign badges to a different employee. The contractor shall assure that badges are turned in for employees who are no longer working on this contract, for employee who no longer need access for whatever reason, or when a badge expires.

The contractor, on a case-by-case basis, will provide its own cleared escorts as needed. The COR/CTM will approve contractor personnel for escort privileges and provide escort training.

[End of Clause]

## **H.7 SAFEGUARDS AND SECURITY AWARENESS PROGRAM**

The contractor shall establish and maintain a Safeguards and Security Awareness Program acceptable to the Department of Energy (DOE) which satisfies the requirements of DOE Order 470.1. A Safeguards Security Awareness Coordinator must be appointed and will be responsible for ensuring all employees, cleared and uncleared, who are assigned to a DOE facility or who are performing work involving access to classified facilities, classified information, or special nuclear materials are informed of their security responsibilities. Any subcontracts in support of this work shall require subcontractors to comply with the contractor's Safeguards and Security Awareness Program.

[End of Clause]

## **H.8 QUALITY ASSURANCE SYSTEM**

In the conduct of the work performed under this contract, the Contractor agrees to establish and/or maintain an acceptable quality assurance system. A quality assurance plan shall be submitted to DOE for approval. If the contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's quality assurance system.

[End of Clause]

## **H.9 KEY PERSONNEL**

The personnel specified below are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. The Contracting Officer is to be notified reasonably in advance of diverting of, or substitution for, any of these individuals. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion and such ratification shall

constitute the consent of the Contracting Officer required by this clause. Whenever, for any reason, one or more of the following employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications with meritorious consideration of increasing opportunity to fully use the talents and capabilities of a diverse workforce. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

NAME	TITLE
_____	Cask designer Lead
_____	Fabrication Lead
_____	Certification Lead

[End of Clause]

#### **H.10 TECHNICAL PROPOSAL**

The following pages of the contractor's Technical Proposal, dated TBD, for this contract are, by reference, hereby incorporated in and made a part of this contract.

Page numbers: TBD

[End of Clause]

#### **H.11 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications, and Other Statements of the Offeror, dated \_\_\_\_\_, for this contract are, by reference, hereby incorporated in and made a part of this contract.

[End of Clause]

#### **H.12 TRANSPORT SYSTEM PURCHASE OPTION**

The Government may exercise the option to purchase available Transport System(s) at any time during the life of the contract. The Government shall provide the Contractor with written notice of its intent to purchase the Transport System(s) at least 60 days prior to the purchase date.

[End of Clause]

## PART II - CONTRACT CLAUSES

### SECTION I

#### CONTRACT CLAUSES

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

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

<http://www.arnet.gov/far/>

##### I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	DATE	TITLE
52.203-3	APR 1984	GRATUITIES
52.203-5	APR 1984	COVENANT AGAINST CONTINGENT FEES
52.203-6	JUL 1995	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	JUL 1995	ANTI-KICKBACK PROCEDURES
52.203-8	JAN 1997	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR OR IMPROPER ACTIVITY
52.203-10	JAN 1997	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	JUN 1997	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-4	AUG 2000	PRINTED OR COPIED DOUBLED-SIDED ON RECYCLED PAPER
52.209-6	JUL 1995	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.211-5	AUG 2000	MATERIAL REQUIREMENTS
52.215-2	JUN 1999	AUDIT AND RECORDS--NEGOTIATION
52.215-8	OCT 1997	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT
52.215-11	OCT 1997	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS
52.215-13	OCT 1997	SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS
52.215-15	DEC 1998	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-17	OCT 1997	WAIVER OF FACILITIES CAPITAL COST OF

		MONEY
52.215-18	OCT 1997	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS
52.215-21	OCT 1997	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS Alternate III (OCT 1997)
52.216-18	OCT 1995	ORDERING
52.216-19	OCT 1995	ORDER LIMITATIONS
52.216-21	OCT 1995	REQUIREMENTS
52.216-22	OCT 1995	INDEFINITE QUANTITY
52.217-8	NOV 1999	OPTION TO EXTEND SERVICES
52.217-9	MAR 2000	OPTION TO EXTEND THE TERM OF THE CONTRACT
52.219-4	JAN 1999	NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS
52.219-8	OCT 2000	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	OCT 2000	SMALL BUSINESS SUBCONTRACTING PLAN Alternate II (OCT 2000)
52.219-16	JAN 1999	LIQUIDATED DAMAGES--SUBCONTRACTING PLAN
52.219-23	OCT 1999	NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS Alternate I (OCT 1998)
52.219-25	OCT 1999	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--DISADVANTAGED STATUS AND REPORTING
52.222-1	FEB 1997	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	FEB 1999	EQUAL OPPORTUNITY
52.222-35	APR 1998	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	JAN 1999	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
52.223-5	APR 1998	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION
52.223-6	JAN 1997	DRUG-FREE WORKPLACE
52.223-14	OCT 2000	TOXIC CHEMICAL RELEASE REPORTING
52.225-1	FEB 2000	BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--SUPPLIES
52.225-13	JUL 2000	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	JUL 1995	AUTHORIZATION AND CONSENT
52.227-2	AUG 1996	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-3	APR 1984	PATENT INDEMNITY
52.227-14	JUN 1987	RIGHTS IN DATA - GENERAL, as modified by DEAR 927.409 (APR 1998), with Alternates I, II,

III, and V

The following is added to (a) of the Limited Rights Notice of subparagraph (g)(2) of Alternate II:

- (i) Use (except for manufacture) by support service contractors;
- (ii) Evaluation by nongovernmental evaluators;
- (iii) Use (except for manufacture) by other contractors participating in the Government's program of which the contract is a part, for information and use in connection with the work performed under their contracts; or
- (iv) Emergency repair or overhaul work.

52.227-23	JUN 1987	RIGHTS TO PROPOSAL DATA (TECHNICAL)
52.230-2	APR 1998	COST ACCOUNTING STANDARDS
52.230-3	APR 1998	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
52.230-6	NOV 1999	ADMINISTRATION OF COST ACCOUNTING STANDARDS
52.232-17	JUN 1996	INTEREST
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	JUN 1997	PROMPT PAYMENT
52.232-33	MAY 1999	PAYMENT BY ELECTRONIC FUNDS TRANSFER-- CENTRAL CONTRACTOR REGISTRATION
52.233-1	DEC 1998	DISPUTES Alternate I (DEC 1991)
52.236-13	NOV 1991	ACCIDENT PREVENTION
52.242-2	APR 1991	PRODUCTION PROGRESS REPORTS
52.242-13	JUL 1995	BANKRUPTCY
52.243-6	APR 1984	CHANGE ORDER ACCOUNTING
52.245-4	APR 1984	GOVERNMENT-FURNISHED PROPERTY (SHORT FORM)
52.247-63	JAN 1997	PREFERENCE FOR U.S.-FLAG AIR CARRIERS
52.247-64	JUN 2000	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS
52.248-1	FEB 2000	VALUE ENGINEERING
52.253-1	JAN 1991	COMPUTER GENERATED FORMS

## **I.2 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).

[End of Clause]

**I.3 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

(a) Definition.

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

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
- (1) 52.222-26, Equal Opportunity (E.O. 11246);
  - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
  - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
  - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels

(46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

[End of Clause]

#### **I.4 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

[End of Clause]

#### **I.5 52.202-1 DEFINITIONS (OCT 1995) (As Modified by 952.202-1) (MAR 1985)**

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means--
  - (1) Any item other than real property, that is of a type customarily used for nongovernmental purposes and that--
    - (i) Has been sold, leased, or licensed to the general public; or
    - (ii) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
    - (i) Modifications of a type customarily available in the commercial marketplace; or

- (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--
    - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  - (7) Any item, combination of items, or service referred to in subparagraph (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
  - (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means--
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial

marketplace in order to meet the requirements of the procuring department or agency; or

- (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

[End of Clause]

#### **I.6 952.204-2 SECURITY (SEP 1997)**

- (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 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 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.

[End of Clause]

## **I.7 952.204-70 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 reflects 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.

[End of Clause]

**I.8 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984) DEVIATION (APR 1999)**

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (b) The contractor shall immediately provide the contracting officer written notice of any

changes in the extent and nature of FOCI over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

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

[End of Clause]

**I.9 952.208-70 PRINTING (APR 1984)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of single unit, or not more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Officer (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[End of Clause]

#### **I.10 952.209-72 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 \_\_\_\_\_ 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.

[End of Clause]

**I.11 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) AS MODIFIED BY DOE HQ 99-03 (MAY 1999)**

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

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

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

"Positions that will be filled from within the Contractor's organization" means

employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

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

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

- (2) State and local government agencies holding Federal contracts of \$25,000 or more shall also list all employment openings with the appropriate office of the State employment service.
  - (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
  - (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (d) Applicability. (1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (e) 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 disabled veterans and veterans of the Vietnam era, and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- (f) Noncompliance. If the Contractor does not comply with the requirements of this

clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

#### **I.12 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**

- (a) Definition.

"Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) 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.

[End of Clause]

#### **I.13 952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995)**

- (a) Definitions.

- (1) "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.).
- (2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.
- (3) "Nonprofit organization" means a university or other institution of higher

education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

- (4) "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.
  - (5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
  - (6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work 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)) must also occur during the period of contract performance.
  - (7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- (c) Invention disclosure, election of title, and filing of patent application by Contractor.
- (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

- (2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.
  - (3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
  - (4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.
- (d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--
- (1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.
  - (2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.
  - (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
- (e) Minimum rights to Contractor and protection of the Contractor right to file.
- (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary 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. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

- (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

- (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to
  - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
  - (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.
- (2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) 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.
- (3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

- (4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

- (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
  - (2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.
  - (3) In the case of subcontracts, at any tier, DOE, 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 the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- (i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the

Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that--

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
  - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
  - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that--
- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;
  - (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
  - (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
  - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the

Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

- (1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
- (2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.
- (3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:
  - (i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;
  - (ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or
  - (iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

[End of Clause]

**I.14 952.227-13 PATENT RIGHTS--ACQUISITION BY THE GOVERNMENT (SEP 1997)**

(a) Definitions.

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

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

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

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

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

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

(b) Allocations of principal rights.

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

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

(c) Minimum rights acquired by the Government.

- (1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:
  - (i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
  - (ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations(10 CFR Part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--
    - (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
    - (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
    - (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
    - (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
  - (iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential

and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

- (iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.
- (v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

- (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
- (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the Geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the

right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

- (4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.
  - (i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
    - (A) The commercial use that is being made, or is intended to be made, of said invention, and
    - (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
  - (ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
  - (iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.
  - (iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
  - (v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon

terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

- (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
  - (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- (vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
- (vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.
- (e) Invention identification, disclosures, and reports.
- (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.
  - (2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the

inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

- (3) The Contractor shall furnish the Contracting Officer the following:
    - (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.
    - (ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.
  - (4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.
  - (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- (f) Examination of records relating to inventions.
- (1) The Contracting Officer or any authorized representative shall, until 3 years

after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

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

by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

- (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

- (1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
  - (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--
    - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
    - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
  - (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
  - (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.
  - (5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.
- (i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall

grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

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

(k) Background Patents.

- (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:
  - (i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
  - (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
- (2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.
- (3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.
- (4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

- (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
  - (ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.
- (l) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.
- (m) Forfeiture of rights in unreported subject inventions.
  - (1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:
    - (i) Files or causes to be filed a United States or foreign patent application thereon; or
    - (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.
  - (2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:
    - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
    - (ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
    - (iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.
  - (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not

supersede other rights and remedies which the Government may have with respect to subject inventions.

[End of Clause]

#### **I.15 952.247-70 FOREIGN TRAVEL (MAR 2000)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1A, Official Foreign Travel, or any subsequent version of this order in effect at the time of award.

[End of Clause]

#### **I.16 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of

results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material during the course of the contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
    - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
      - (1) Negligence;
      - (2) Contributory negligence;
      - (3) Assumption of risk; or
      - (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 therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
- (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification of 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 Audit and Records. Negotiation, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontracts which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

**I.17 970.5204-78 LAWS, REGULATIONS, AND DOE DIRECTIVES (JUN 1997)**

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those 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 (c) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause entitled, Changes, of this contract.
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR (DEAR) 970.5204-2. When such a process is used, the set of tailored ES&H requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) The contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the contractor determines such requirements apply.

[End of Clause]

### **I.18 CLAUSES APPLICABLE TO FIXED PRICE CONTRACT LINE ITEMS FOR SUPPLIES**

The following clauses are incorporated by reference except for FAR 52.232-32 and 52.245-2 which are incorporated by full text. The clauses are applicable to fixed price and fixed unit price contract line items as defined in the Section B PRICE SCHEDULE.

52.222-20	DEC 1996	WALSH-HEALEY PUBLIC CONTRACTS ACT
52.232-1	APR 1984	PAYMENTS
52.243-1	AUG 1987	CHANGES - FIXED-PRICE Alternate II (APR 1984)
52.249-2	SEP 1996	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
52.249-8	APR 1984	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)

### **I.19 CLAUSES APPLICABLE TO TIME AND MATERIAL CONTRACT LINE ITEMS**

The following clauses are incorporated by reference except for DEAR 952.245-5 which is incorporated by full text. The clauses are applicable to Time and Material contract line items as defined in clause ORO B13 PRICE SCHEDULE.

52.232-7	MAR 2000	PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS
52.243-3	SEP 2000	CHANGES--TIME-AND-MATERIALS OR LABOR-HOURS
52.249-6	SEP 1996	TERMINATION (COST-REIMBURSEMENT) Alternate IV (SEP 1996)
52.249-14	APR 1984	EXCUSABLE DELAYS

### **I.20 CLAUSES APPLICABLE TO FIXED PRICE AND TIME AND MATERIAL LINE ITEMS**

The following clauses are incorporated by reference. They are applicable to Fixed Price, Fixed Unit Price, and Time and Material contract line items as defined in clause ORO B13 Price Schedule.

52.215-14	OCT 1997	INTEGRITY OF UNIT PRICES
52.229-3	JAN 1991	FEDERAL, STATE, AND LOCAL TAXES
52.229-5	APR 1984	TAXES - CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO
52.232-8	MAY 1997	DISCOUNTS FOR PROMPT PAYMENT
52.232-11	APR 1984	EXTRAS
52.233-3	AUG 1996	PROTEST AFTER AWARD
52.244-2	AUG 1998	SUBCONTRACTS

### **I.21 CLAUSES APPLICABLE TO SERVICES**

FAR clauses 52.222-41, 52.222-43, 52.222-44, 52.222-49, 52.246-25 apply to all service contract line items as defined in clause ORO B13 PRICE SCHEDULE. FAR

clauses 52.216-18, 52.216-19, 52.216-21 will be used to initiate services during the "operations" phase of the statement of work. This phase is defined as the time when the certified transport system is used to transport TPBARs. The clauses are incorporated by reference as follows.

52.222-41	MAY 1989	SERVICE CONTRACT ACT OF 1965, AS AMENDED
52.222-43	MAY 1989	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)
52.222-44	MAY 1989	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT
52.222-49	MAY 1989	SERVICE CONTRACT ACT -- PLACE OF PERFORMANCE UNKNOWN
52.246-25	FEB 1997	LIMITATION OF LIABILITY - SERVICES

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

**SECTION J**

**LIST OF ATTACHMENTS**

**J.1 LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

Attachment	Description
A	Reporting Requirements Checklist
B	Applicable DOE Directives, List B
C	Report Distribution List - To Be Determined

[End of Clause]

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**ATTACHMENT A  
REPORTING REQUIREMENTS CHECK LIST**

Posted seperately in conjunction with the RFP.

**ATTACHMENT B  
LIST OF APPLICABLE DOE AND ORO DIRECTIVES, LIST B**

Applicable DOE Orders are listed in Section C, Statement of Work, Paragraph 5.0, Item (14), and Paragraph 6.11.

**PART IV - REPRESENTATIONS AND INSTRUCTIONS**

**SECTION K**

**REPRESENTATIONS, CERTIFICATIONS, AND**

**OTHER STATEMENTS OF OFFERORS**

**FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)**

**K.1 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)**

(a) The offeror certifies that--

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision

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[Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and
  - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.
- (c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

[End of Provision]

**K.2 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
  - (3) He or she will include the language of this certification in all subcontract awards

at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

[End of Provision]

### **K.3 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)**

(a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

TIN:\_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of

business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(f) Common parent.

Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

[End of Provision]

**K.4 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)**

- (a) Definition. Women-owned business concern, as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

- (b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it  is a women-owned business concern.

[End of Provision]

**K.5 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (JAN 2001)**

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that--
- (i) The Offeror and/or any of its Principals--
    - (A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
    - (B) Have  have not , within the three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
    - (C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and
  - (ii) (A) The offeror, aside from the offenses enumerated in paragraphs (a)(1)(i)(A), (B), and (C) of this provisions, has  has not  within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws--
    - (1) Been convicted of a Federal or state felony (or has any Federal or state felony indictments currently pending against them); or
    - (2) Had a Federal court judgment in a civil case brought by the United States rendered against them; or
    - (3) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.

(B) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer; and

(iii) The Offeror has  has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

[End of Provision]

#### **K.6 52.215-6 PLACE OF PERFORMANCE (OCT 1997)**

- (a) The offeror or respondent, in the performance of any contract resulting from this solicitation,  intends,  does not intend [check applicable block] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.
- (b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it

shall insert in the following spaces the required information:

Place of Performance  
Street Address, City,  
State, County, Zip Code)

Name and Address of Owner  
And Operator of the Plant  
Or Facility if Other than  
Offeror or Respondent

_____	_____
_____	_____
_____	_____
_____	_____

[End of Provision]

**K.7 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2000)**

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 336999.
- (2) The small business size standard is 500 for employees.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not, itself manufacture, is 500 employees.
- (b) Representations.
  - (1) The offeror represents as part of its offer that it [ ] is, [ ] is not a small business concern.
  - (2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
  - (3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a women-owned small business concern.
  - (4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.
  - (5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(c) Definitions. As used in this provision-- "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 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 concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"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) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of

the set-aside contains restrictions on the source of the end items to be furnished.

- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--
  - (i) Be punished by imposition of fine, imprisonment, or both;
  - (ii) Be subject to administrative remedies, including suspension and debarment; and
  - (iii) Be ineligible for participation in programs conducted under the authority of the Act.

[End of Provision]

#### **K.8 52.219-22 SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)**

(a) General. This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, Small Business Program Representation.

(b) Representations.

(1) General. The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either--

(i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

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

(B) Where the concern is owned by one or more disadvantaged 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

(C) It is identified, on the date of its representation, as a certified small

disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

(ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2)  For Joint Ventures. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:\_\_\_\_\_.]

(c) Penalties and Remedies. Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall--

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

[End of Provision]

**K.9 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)**

The offeror represents that--

(a) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It  has,  has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

[End of Provision]

**K.10 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

The offeror represents that

(a) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

[End of Provision]

**K.11 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)**

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or--

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: **(Check each block that is applicable.)**

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(ii) 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);

(iii) 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);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana

Islands, or any other territory or possession over which the United States has jurisdiction.

[End of Provision]

**K.12 52.227-6 ROYALTY INFORMATION (APR 1984)**

- (a) Cost or charges for royalties. When 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.
  - (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.

[End of Provision]

**K.13 52.227-15 REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (MAY 1999)**

- (a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data--General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with

its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

- (b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data--General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.
- (c) The offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)--

None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

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NOTE: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights In Data-- General."

[End of Provision]

**K.14 952.204-73 FACILITY CLEARANCE (APR 1999) DEVIATION**

**NOTICES**

**Statute prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless a waiver is granted by the Secretary of Energy.**

**Offerors who have either a Department of Defense or a Department of Energy facility clearance, generally need not resubmit the following FOCI 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.

(2) Information submitted by the offeror in response to the Standard Form 328 shall be used solely for the purposes of evaluating FOCI and shall be treated by the DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328, 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. 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.

(b) Definitions

(1) A foreign interest is defined as any of the following:

- A foreign government, foreign government agency, or representative of a foreign government;

- 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

- 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) A facility clearance is an administrative determination that a facility is eligible for access to classified information or special nuclear materials. A Facility Clearance shall be based upon a determination that satisfactory safeguards and security measures are afforded the activities being performed at the facility. It is DOE policy that all contractors or subcontractors requiring access to classified information or special nuclear material be processed for a Facility Clearance at the level appropriate to the activities being performed at the facility. Approval for a Facility Clearance shall be based upon:

(1) A favorable foreign ownership, control, or influence (FOCI) determination. This determination will be based upon the contractor's response to the ten questions in Standard Form 328 and any supporting data provided by the contractor. 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.

(2) A contract containing the appropriate security clauses.

(3) Approved safeguards and security plans which describe protective measures appropriate to the classified activities being performed at the facility.

(4) If access to nuclear materials is involved, an established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System.

(5) For a facility to possess classified matter or special nuclear material at its location, a survey conducted no more than 6 months before the facility clearance date, with

a  
composite facility rating of satisfactory.

(6) Appointment of a Facility Security Officer, and, if applicable, a Materials Control and Accountability Representative. The Facility Security Officer must possess an access authorization equivalent to the Facility Clearance.

(7) Access authorizations for key management personnel. Key management personnel, who will be determined on a case-by-case basis, must possess access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required even for contracts which do not require contractor's 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.

(e) Facility Clearances are required prior to the granting of an access authorization under a contract.

(f) Except as otherwise authorized in writing by the contracting officer, the provisions of any resulting contract shall 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 of this provision directly to the local Office of Safeguards and Security cognizant of the prime contract.

**NOTICE TO OFFERORS - CONTENTS REVIEW - Please Review Before Submitting**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) above, the offeror should review the FOCI submission to ensure that:

- (1) The SF328 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;
- (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;

(5) A consolidated financial information report has been attached;

(6) A FOCI submission has been attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership); and,

(7) A summary FOCI data sheet.

NOTE: If any of these documents are missing, the contracting officer cannot complete award of the contract.

[End of Provision]

## SECTION L

### INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

#### **L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

#### **I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) PROVISIONS**

NUMBER	DATE	TITLE
52.204-6	JUN 1999	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER
52.222-24	FEB 1999	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION

#### **L.2 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

[End of Provision]

#### **L.3 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

[End of Provision]

#### **L.4 52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (FEB 2000)**

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

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing" or "written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time", if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
  - (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
- (3) Submission, modification, revision, and withdrawal of proposals.
- (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.
  - (ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--
    - (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
    - (2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
    - (3) It is the only proposal received.
  - (B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
  - (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

- (iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
  - (v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
  - (5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.
  - (6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
  - (7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
  - (8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.
- (d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).
  - (e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--
    - (1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with--the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without

restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

- (2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

- (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.
- (2) The Government may reject any or all proposals if such action is in the Government's interest.
- (3) The Government may waive informalities and minor irregularities in proposals received.
- (4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.
- (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) The Government may disclose the following information in postaward debriefings to other offerors:
  - (i) The overall evaluated cost or price and technical rating of the successful offeror;
  - (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
  - (iii) A summary of the rationale for award; and
  - (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

[End of Provision]

**L.5 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) Alternate IV (OCT 1997)**

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below:

SEE CLAUSE L.24 PROPOSAL PREPARATION INSTRUCTIONS -- VOLUME III, COST /PRICE PROPROPOSAL (AUG 2000)

[End of Provision]

**L.6 52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a fixed price, fixed unit price, and time and material contract resulting from this solicitation.

[End of Provision]

**L.7 952.227-84 RIGHT TO REQUEST PATENT WAIVER (FEB 1998)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contract. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a

Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

[End of Provision]

**L.8 52.233-2 SERVICE OF PROTEST (SEP 1996) (As Modified by 952.233-2) (AUG 1996)**

- (a) Protests, as defined in Section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

USDOE

TBD

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
- (c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

[End of Provision]

**L.9 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY (SEP 1996)**

- (a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the contracting officer for this procurement.
- (b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.).

[End of Provision]

**L.10 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)**

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

[End of Provision]

**L.11 CONTENT OF RESULTING CONTRACT**

Any contract awarded as a result of this RFP will contain Part I -- The Schedule, Part II -- Contract Clauses, and Part III, Section J -- List of Documents, Exhibits and Other Attachments. Blank areas appearing in these sections will be completed during or after negotiations. Part IV, Section K will be incorporated in the contract by reference.

[End of Provision]

**L.12 EXCLUDED CONTRACTORS**

Proposals are not solicited from firms which are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from federal procurement or nonprocurement programs.

[End of Provision]

**L.13 TIME, DATE AND PLACE PROPOSALS ARE DUE**

Mailed proposals shall be marked as follows:

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MAIL TO:

U.S. Department of Energy

ATTN: Jill Y. Albaugh

SOLICITATION NO. DE-RP05-00OR22792.000

DUE: Time: \_\_\_\_\_ Date: \_\_\_\_\_

NOTICE TO DOE MAIL ROOM: DO NOT OPEN. THIS IS A PROPOSAL UNDER THE ABOVE IDENTIFIED SOLICITATION.

Handcarried proposals shall be marked as follows:

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HAND CARRY TO:

U.S. Department of Energy  
ATTN: Jill Y. Albaugh

SOLICITATION NO. DE-RP05-00OR22792.000

DUE: Time: \_\_\_\_\_ Date: \_\_\_\_\_

NOTICE TO DOE MAIL ROOM: DO NOT OPEN. THIS IS A PROPOSAL UNDER THE ABOVE IDENTIFIED SOLICITATION.

- (a) All proposals are due NO LATER THAN \_\_\_\_\_ local prevailing time on \_\_\_\_\_. (CAUTION: See the proposal submission instructions, including the provision describing treatment of late submissions, modifications and withdrawals of proposals.)
- (b) The offeror assumes the full responsibility of insuring that the offer is received at the place and by the date and time specified in this solicitation.
- (c) It may not be possible to handcarry the package(s) between the hours \_\_\_\_\_ and \_\_\_\_\_ workdays. Delivery to any other location may result in late receipt of the proposal and is strongly discouraged.
- (d) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

[End of Provision]

**L.14 SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION (UNRESTRICTED)**

This acquisition is unrestricted and contains no set-aside provisions. However, for purposes of this solicitation a small business is defined as 500 employees. The North American Industry Classification System is 336999--All Other Transportation Equipment Manufacturing.

[End of Provision]

**L.15 NUMBER OF AWARDS**

It is anticipated that there will be one award resulting from this RFP.

[End of Provision]

**L.16 EXPENSES RELATED TO PROPOSAL OR BID SUBMISSIONS**

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or bid, or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

[End of Provision]

#### **L.17 AMENDMENT OF THE SOLICITATION**

The only method by which any term of the solicitation may be modified is by an express, formal amendment to the solicitation generated by the issuing office. No other communication made at any scheduled preproposal/prebid conference or subsequent discussions, whether oral or in writing, will modify or supersede the terms of the solicitation. Any amendments to this solicitation (prior to submission of offers and other information) generated by the issuing office will be provided on the Internet at the Oak Ridge Operations Office, Procurement and Contracts Division home page under "Current Solicitations," address: [http://www.doe.gov/procurement/oro\\_home.html](http://www.doe.gov/procurement/oro_home.html). It will be the responsibility of the offeror to routinely examine the specified home page for any amendments that may be issued on this solicitation prior to submission of offer and other information.

[End of Provision]

#### **L.18 NOTICE OF LABOR PROVISIONS**

- (a) Offerors should note that this solicitation includes contract clauses requiring the listing of employment openings with the local office of the Federal-State employment service system and postings of employment notices. (See clauses "Affirmative Action for Special Disabled and Vietnam Era Veterans" and "Affirmative Action for Handicapped Workers").
- (b) This solicitation may include clauses relating to specific labor laws. General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contract Work Hours Standards Act (40 U.S.C. 327-333), and the Service Contract Act of 1965 (41 U.S.C. 351-358) may be obtained from the Department of Labor, Washington, D.C., 20310, or from any regional office of that agency. Requests for information should include the RFP number, the name and address of the issuing agency, and a description of the supplies or services.

[End of Provision]

#### **L.19 DISPOSITION OF PROPOSALS OR BIDS**

Proposals or bids will not be returned (except for timely withdrawals).

[End of Provision]

#### **L.20 PROPOSAL PREPARATION INSTRUCTIONS--GENERAL**

- (a) General. Proposals are expected to conform to the Solicitation Provision, FAR 52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITIONS (FEB 2000), and prepared in accordance with this section. To aid in evaluation, proposals shall be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part shall be appropriately numbered, and identified with the name of the offeror, the date, and the solicitation number of the extent practicable.
- (b) Overall Arrangement of Proposal.

- (1) The overall proposal shall consist of three (3) physically separated volumes, individually entitled as stated below. The required number of each proposal volume and the required packaging and grouping is also shown in the matrix below.

Volume I -- Offer and Other Documents  
Total Copies Required: 5

Volume II -- Technical and Business Mgmt.  
Total Copies Required: 10  
To Be Packaged As Follows:

Volume III -- Cost  
Total Copies Required: 5  
To Be Packaged As Follows:

- (2) Each group, designated above, is to be packaged individually. This does not preclude packaging more than one, or all, groups in a single overall package. Mark the group number on the outside of the individual package or packages.
- (3) Copy No. 1 of the proposal or bid shall contain the signed original of all documents requiring signature by the offeror. Use of reproductions of signed originals is authorized in all other copies of the proposal or bid.

[End of Provision]

## **L.21 PROPOSAL PREPARATION INSTRUCTIONS--VOLUME I, OFFER AND OTHER DOCUMENTS**

(a) General.

Volume I, Offer and Other Documents, consists of the actual offer to enter into a contract to perform the desired work. It also includes the offeror's qualification criteria proposal (if applicable), required representations, certifications, and other statements of the offeror, make or buy program, identification of technical data to be withheld, request for waiver of patent clauses, any other administrative information, and a summary of exceptions and deviations taken.

(b) Format and Content.

Volume I, Offer and Other Documents, shall include the following documents (in the order listed):

- (1) The Standard Form 33 with blocks 12 through 18 completed by the offeror.
- (2) Qualification Criteria Proposal (if applicable).
- (3) Section K, Offeror Representations, Certifications, and other statements of the offeror fully executed.
- (4) Additional Information to be furnished by the offeror.
- (5) Exceptions and Deviations taken to the contract.
- (6) Summary of Exceptions and Deviations taken in other Volumes.

(c) The Standard Form 33.

- (1) Use of the Form. The Standard Form 33 is to be executed fully and used as the cover sheet (or first page) of each copy of Volume I, Offer and Other Documents.
- (2) Acceptance Period. The acceptance period entered on the Standard Form 33 by the offeror shall not be less than that prescribed in solicitation Part IV-- Section L, which shall apply if no other period is offered.
- (3) Signature Authority. The person signing the Standard Form 33 must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to

make an award without further discussion if it so elects.

- (d) Reserved.
- (e) Representations and Certification  
Offeror should complete the representations and certifications according to the instructions contained in Part IV - Section K.
- (f) Additional Information to be Furnished.
  - (1) Section B, Price Schedules, in the format provided in this RFP.
  - (2) Data to be inserted in blanks found in Sections \_\_\_\_\_.
  - (3) Remittance Address. If the offeror's remittance address is different from the address shown on the Standard Form 33, such address shall be furnished, including ZIP Code.
  - (4) Government Property.
    - (i) Unless otherwise stated, the offeror is expected to furnish all property (including, but not limited to facilities, equipment, special tooling, and material) necessary for the performance of the work defined in this solicitation. Government property as used herein means all Government- furnished property, together with all property acquired by the Contractor, title which vests in the Government.
    - (ii) Notwithstanding the above, the Government reserves the right under any resulting contract to furnish items of equipment, materials, supplies or facilities.
  - (5) Withholding of Technical Data: Pursuant to the clause entitled "Rights to Proposal Data - Technical", the offeror must provide the required statement in this Section of Volume I.
- (g) Exceptions and Deviations to the Contract.
  - (1) The offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the contract, Offeror Representations, Certifications, and other Statement of the offeror form, the requirements of this Section, and other matters included in Volume I -- Offer and Other Documents, including the reporting requirements.
  - (2) Any exceptions taken must contain sufficient amplification and justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing benefit to the Government, however, may result in rejection of your proposal(s) as unacceptable.
- (h) Summary of Exceptions and Deviations Taken in Other Volumes.  
The offeror shall summarize each technical, cost, business, or other exceptions taken elsewhere, and provide specific cross references to its full discussion.

[End of Provision]

## **L.22 PROPOSAL PREPARATION INSTRUCTIONS--VOLUME II, TECHNICAL AND BUSINESS MANAGEMENT PROPOSAL**

- (a) General.
  - (1) Volume II -- The Technical and Business Management Proposal (hereinafter referred to as the Technical Proposal) consists of the Offeror's proposal addressing the technical and business management aspects of the acquisition, the Offeror's capabilities and what the Offeror will do to satisfy the requirements of the Statement of Work. Since the Technical Proposal will be evaluated to determine such matters as understanding of the work to be performed, technical approach, planning and scheduling of technical aspects and potential for completing the desired work (Section M and Section C), it

should be specific and complete in every detail. The proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of what it is the Offeror will do to satisfy the requirements of the Statement of Work.

- (2) In order that the Technical Proposal may be evaluated strictly on the merit of the material submitted, no contractual cost information is to be included in the Technical Proposal. Where estimated labor hours will provide clarity, they shall be quoted in labor hour figures only, with no indication as to the cost of these labor hours.
- (3) Technical Proposal Page Limitation.
  - (i) The Technical Proposal shall not exceed [TO BE DETERMINED] pages. For interpretation of page guidelines, the front and back of a single sheet are counted as two pages. Except for illustrations, the proposed text shall be typed (type size shall not exceed 12 characters per inch averaged over one full line of text) and printed, unreduced, on size 8 1/2-inch by 11-inch paper with minimum left and right margins of 1/2-inch. Pages shall be sequentially numbered with the page number on each page. The page guidelines constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any proposal by reference, attachment, or appendix, as a means to circumvent the page limitation. Videotapes, audiotapes, and floppy disks will not be reviewed.
  - (ii) If a Technical Proposal is received which exceeds the page limitation, the additional pages will not be read and evaluated by DOE. The pages, which exceed the page limitation, will be removed from the proposal and NOT returned to the Offeror.

(b) Format and Content.

- (1) Volume II, Technical Proposal, shall include the following components:
  - (i) Table of Contents.
  - (ii) List of Tables and Figures.
  - (iii) Technical Summary.
  - (iv) Technical Discussion.
  - (v) Technical Exceptions and Deviations.
- (2) These major headings may be subdivided or supplemented by the Offeror as appropriate.
  - (i) Technical Summary. This short section shall contain key a brief summary of the key points of the proposal.
  - (ii) Technical Discussion. This section shall contain the major portion of the Technical Proposal. It should demonstrate Offeror's capability in meeting the requirements set forth in the Statement of Work. It should clearly address each of the Technical and Management Evaluation Criteria set forth in Section M. It should follow the same order as the evaluation criteria listed in Section M, and each part of the section should be identified with the pertinent evaluation criterion number. Information provided by Offeror should include, but is not limited to, the following requested data under each criterion:

(c) EVALUATION CRITERIA AND PROPOSAL INSTRUCTIONS

The following contains the evaluation criteria restated from Section M and instructions for preparation of Volume II. These instructions do not constitute additional technical evaluation criteria; however, failure to provide the requested information, as well as providing inaccurate or incomplete information may be considered by the government as an indication of lack of competency and may be considered as a weakness under the respective criterion. The requested information includes, but is not limited to, the following criteria guidance. Offerors are encouraged to submit any information that may be important to the proposal as well as provide DOE with the requested information.

**Criterion 1-Technical Capability**

**Evaluation of the Offeror's technical capability will be based on the subcriteria listed below:**

**Subcriterion (a) The Offeror will be evaluated on its ability to satisfy the requirements of the SOW.**

Information should be provided that demonstrates the Offeror's understanding of the technical requirements and challenges associated with the performance requirements of the SOW tasks. Discussion should include the technical approach proposed and demonstrate the merit and likelihood of success of the Offeror's proposed approach. The proposal should address the following:

- 1) Performance capabilities for new, existing, or modified Transport System designs relative to the technical requirements of the SOW, with emphasis on issues associated with tritium and how they are addressed by the design. Also demonstrate understanding of the issues of shipping large quantities of tritium.
- 2) Performance of the Transport Cask design under normal conditions of transport and hypothetical accident conditions under 10 CFR 71.
- 3) Adaptability and compatibility of Transport System design with infrastructure at the Reactor Facilities and the TEF.
- 4) For designs requiring new Transport Cask fabrication, provide information detailing how previous / current casks were fabricated, including time / activities / scheduling from concept to delivery, and evidence of and compliance with an NRC approved QA program or equivalent (QA requirements in 10 CFR 71, Subpart H [or equivalent], 10 CFR 830.) Also provide a description of the Offeror's manufacturing capability. The discussion should also include a description of the approach that will be used to manage fabrication activities.
- 5) Propose the detailed activity schedule and discuss ability to satisfy the DOE schedule as defined in the SOW.
- 6) Documentation should be provided that demonstrates that the trailer that will be used to transport the cask will meet ANSI 14.30 criteria, and be legal weight when fully loaded.
- 7) Discuss QA programs and other means that will be employed to ensure that the trailer will meet the Commercial Vehicle Safety Alliance (CVSA) and Enhanced CVSA inspection criteria.
- 8) Justification for number of Transport System(s) that are being proposed to meet the program's needs.
- 9) Describe the support equipment and spares that will be required to maintain the Transport System(s).

**Subcriterion (b) The Offeror will be evaluated on its ability to provide Technical Support and Maintenance support to meet the requirements of the SOW.**

Describe the Technical Support proposed to satisfy the SOW and include the

capability to provide on-site Technical Support to assist with loading / unloading and leak testing. Describe Maintenance of the proposed Transport System(s) and address the method or plans to accomplish Maintenance. Provide a staffing plan for performing tasks assigned in the SOW.

### **Criterion 2- Experience**

**The Offeror will be evaluated on its relevant experience in performing work comparable to the SOW.**

Offeror should submit information that describes its experience with designing, fabricating, and testing Type B Packaging; and obtaining NRC/DOE or IAEA packaging certification. If Transport Cask fabrication is necessary, provide a description of the Offeror's experience in fabricating fuel casks.

Discussion should include schedule information indicating how long certification took from initial SARP submittal to approval. Discussion should also include data on number and scope of questions required to be answered following initial SARP submittal and receipt of CoC by certifying authority.

Offeror should submit information that demonstrates knowledge of ANSI N14.30 and any experience with the standard. Offeror should submit information describing experience with providing the Technical Support and Maintenance requested in the SOW.

Provide customer points of contact to verify experience discussed in proposal. Include the name, title, and employer's name and phone number.

### **Criterion 3 - Past Performance**

**The Offeror's record of past performance will be evaluated on the extent of the Offeror's relevant success in performing work of similar size, scope, and complexity to that required by the SOW and other terms and conditions of the solicitation. The Past Performance Survey (See Section L, Attachment L-1) will be used to collect information regarding past performance; however, the Government may consider information from any source, and may conduct evaluations based on any number of returned Past Performance Surveys. The Government has no obligation to contact any or all references.**

**In the case of an Offeror without a record of relevant past performance for whom information on past performance is not available, the Offeror will not be evaluated favorably or unfavorably on past performance.**

Provide a list of all current contracts and contracts completed or terminated during the past three years that are relevant to the Statement of Work. The contracts may be with Federal, State, or Local government and /or private entities. Include the contract number, the value of the contract, a brief description of the Statement of Work, the sponsoring agency, point of contact, and telephone number.

The Offeror is responsible for obtaining the past performance information from its references from three contracts. The Offeror shall provide the Past Performance Survey, included in Section L, Attachment L-1, to the Offeror's references along with a stamped envelope addressed as follows:

U.S. Department of Energy  
Oak Ridge Operations Office  
Procurement and Contracts Division  
Attn.: Jill Albaugh, AD-42

RFP DE-RP05-00OR22792  
P.O. Box 2001  
Oak Ridge, TN 37831

The Offeror shall be responsible for assuring, to the extent possible, that the past performance information is returned to DOE either by U.S. Postal mail or by facsimile to 865-241-9218. Receipt of the surveys by DOE is not subject to the provisions of the clause in Section L entitled, "Instructions to Offerors--Competitive Acquisition," related to late proposals.

Once completed, the Past Performance Survey will become part of Source Selection Information -- See FAR 3.104.

**Criterion 4-Business Management**  
**Evaluation of the Offeror's Business Management capability will be based on the Subcriteria listed below:**

**Subcriterion (a) Management Capability and Approach**

**The Offeror will be evaluated on its proposed approach to managing the contract to comply with the requirements of this solicitation. This includes, but is not limited to, the proposed organizational structure, lines of authority, levels of management, planning, and scheduling.**

Describe approach to organizing and managing technical staff resources and SOW tasks, including project management activities. This discussion should convey the Offeror's understanding of the scope of the SOW, include a description of interfaces and authorities of the Offeror's organizational units, including the approach to coordinate and integrate any proposed subcontract activities, and also include organizational charts, and interfaces as appropriate, indicating organizational lines of authority.

Provide plans and procedures proposed for obtaining Transport Cask design approval from the certifying organization, and for maintaining technical communication both within the Offeror's organization, between Offeror and subcontractors, and between Offeror and DOE/NRC.

Provide a description of the management approach and system to be implemented to measure and control the schedule at the prime and subcontractor level for each task to be issued under the contract.

**Subcriterion (b)-Personnel Resources**

**The Offeror will be evaluated on the qualifications and experience of the proposed Transport System design, fabrication and certification team leads.**

Identify by name and submit resumes (not to exceed 2 pages) for the lead technical management and operational personnel proposed for the duration of the contract. Resumes should include education and current experience pertinent to the technical task areas of the SOW such as, but not all inclusive of design, calculations, testing. Describe the nature and extent of the commitment of each of the principal technical personnel proposed and state the percentage of time proposed to be devoted to the contract by these individuals. Describe the extent, availability, and general experience and qualifications of additional technical management personnel resources available, or potentially available, for assignment to possible principal technical personnel vacancies which might occur during the contract period as a result of retirement, resignations,

reassignments or other such reasons. Provide letters of commitment if the lead personnel being proposed are not currently employed by the Offeror.

**Subcriterion (c)-Small Business Subcontracting Opportunities  
The Offeror's proposed Small Business Subcontracting Plan will be evaluated regarding the participation of Small Disadvantaged Businesses.**

As part of the proposal, the Offeror shall provide its proposed Subcontracting Plan (See Section I, clause 52.219-9). The Offeror shall describe its plans to use Small Disadvantaged Businesses (SDBs) in performance of the contract as identified in the Offeror's subcontracting plan.

**L.23 PROPOSAL PREPARATION INSTRUCTIONS-VOLUME III, COST/PRICE  
PROPOSAL (OCT 2000)**

- (a) Offerors shall use the price schedules in Section B of the RFP to insert all prices. Offerors are required to propose on both price schedules, clauses B.2 and B.3. The Government will determine which method of procurement provides the value to the Government.
- (b) The price schedules shall be accomplished by detailed pricing information for each unit price proposed for all Time and Material (T&M) Contract Line Items (CLINs.) The detailed pricing information shall adequately support and demonstrate that the proposed prices are realistic for the work to be performed and the offeror's understanding of the contract requirements. The information shall include, but not limited to, the following data elements:

- Labor Categories
- Labor Hours (by category)
- Fully Loaded Labor rates (by category)
- Subcontracts (Itemized)
- Other (Itemized)
- Materials (Itemized)\*
- Provide the rates for all indirect cost pools allocable to this contract.

\*No fee will be applied to the material cost for T & M CLINs.

- (c) The price schedules shall be accompanied by detailed pricing information, segregated into two components--usage and maintenance, for CLINs 006 and 010 in Clause B.2. The detailed pricing information shall adequately support and demonstrate that the proposed prices are realistic for the work to be performed and the offeror's understanding of the contract requirements. The information shall include, but not be limited to, the following data elements for each component:

- Labor Categories
- Labor Hours (by category)
- Fully Loaded Labor Rates (by category)
- Subcontracts (Itemized)
- Other (Itemized)
- Materials (Itemized)\*

\*No fee will be applied to the material cost for T&M CLINs

Offerors are not required to submit any detailed pricing information for: Fixed Price CLINs; that portion of the price for CLINs 006 and 010 that represents the cost of the transport system; CLIN 0013; or CLIN 00F.

- (d) The offeror shall include any assumptions that form the basis for each unit price and estimated total price. All unit prices and estimated total prices should be expressed in no more than two decimal points. Although certified cost and pricing data is not required the government reserves the right to request and obtain such data should it be necessary in order to properly evaluate the offeror's proposal. The Government also reserves the right to have the Offeror's price schedules and any detailed pricing information audited by the Defense Contract Audit Agency (DCAA).
- (e) FINANCIAL RESPONSIBILITY - To be eligible for award of a contract, the Government must determine the Offeror to be financially responsible as defined in FAR 9.104-1(a) -- a prospective contractor must have adequate financial resources to perform the contract, or the ability to obtain them. The determination of financial responsibility to complete this contract shall be made by DOE. However, the DCAA may be requested to perform a financial responsibility review for the Government's consideration. The burden is on the Offeror to provide sufficient documentation to allow the Government to determine responsibility. As a minimum, the Offeror should provide the following:

(1) A current Statement of Financial Position (Balance Sheet) and Income Statement covering all quarters completed in the current year and projected data for the balance of the year.

(2) An audit opinion (rendered by an independent Certified Public Accountant firm) and the related audited financial statements and notes to the financial statements for the last two fiscal years.

(3) The information required above for any subcontractor representing 20 percent or more of the total proposed price.

(4) A letter of credit that contains the name of the lender and the financing terms, if credit is to be obtained.

(5) The Offeror's Dun and Bradstreet Number. See FAR provision 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)

[End of Clause]

**L.24 INTENTION TO PROPOSE**

Please review this RFP. To enable us to update our source lists, please complete the following and mail to the address below by the earliest practical date.

RFP Number:

\_\_\_\_\_ We do intend to submit a proposal.

\_\_\_\_\_ We do not intend to submit a proposal for the following reasons:

\_\_\_\_\_

Name and Address of Firm or Organization (Include Zip Code)

PRIME:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SUBCONTRACTOR(S):

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Typed Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: Unless otherwise stated in the RFP, no other solicitation materials should be returned if you do not intend to submit a proposal.

Mail To:

Department of Energy  
Oak Ridge Operations Office  
ATTN: Jill Y. Albaugh  
Box 2001  
Oak Ridge, Tennessee 37831

If you prefer, you may mail this form electronically to \_\_\_\_\_ at the following address:

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## SECTION M

### EVALUATION FACTORS FOR AWARD

#### **M.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

#### I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) PROVISIONS

NUMBER	DATE	TITLE
52.217-5	JUL 1990	EVALUATION OF OPTIONS

#### **M.2 EVALUATION GENERAL -- GENERAL**

- (a) Proposals will be evaluated in accordance with applicable DOE and Federal acquisition policies and procedures. Evaluation will be performed to determine the offeror's past performance, understanding of work to be performed, technical approach, potential for completing the work as specified in the solicitation, cost reasonableness, the probable cost to the Government, and ranking with competing offerors.
- (b) Award will be made to the responsible offeror, whose offer, conforming to this solicitation, is considered the best value to the Government based on the Evaluation Criteria in this Section M.
- (c) Offeror's are advised that DOE Contractor Personnel and Tennessee Valley Authority Personnel may assist the Government during the Government's evaluation of proposals. These persons shall be authorized access to technical proposals and discussions that are necessary to enable them to provide technical advice to the Government. These individuals will be required to protect the confidentiality of any specifically identified trade secrets and/or privileged or confidential commercial or financial information obtained as a result of their participation in this evaluation. They shall be expressly prohibited from scoring, ranking, or recommending the selection of source.
- (d) In accordance with FAR 52.215-1, Instructions to Offerors - Competitive Acquisition, the Government intends to make award without discussion. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- (e) However, DOE reserves the right to conduct written and/or oral discussions with all

offerors whose offers are in the competitive range. The extent of discussions with the offerors in the competitive range will depend on the circumstances of the procurement and the offerors' proposals as submitted. The written and/or oral discussions are intended to assist the Source Evaluation Board in accomplishing (1) a full understanding of the offers and their strengths and deficiencies based upon the individual efforts of each offeror; and (2) assurance that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors.

Once discussions have been held with all firms in the competitive range, all will be offered the opportunity to submit a revised proposal by a common cutoff time and date. That is, all firms will be given the opportunity to revise their offers to reflect the results of discussions. If the revised proposal is received after the established common cutoff time or date, it shall be handled in accordance with FAR 52.215-1, Instructions to Offerors - Competitive Acquisition. Each revised proposal shall contain the signed contract offer of the proposer.

[End of Provision]

### **M.3 EVALUATION CRITERIA**

#### **a. TECHNICAL AND BUSINESS MANAGEMENT CRITERIA**

Technical aspects of proposals will be evaluated in accordance with the following criteria.

##### EVALUATION CRITERIA

###### Criterion 1- Technical Capability

Evaluation of the Offeror's technical capability will be based on the subcriteria listed below:

Subcriterion (a) The Offeror will be evaluated on its ability to satisfy the requirements of the SOW.

Subcriterion (b) The Offeror will be evaluated on its ability to provide Technical Support and Maintenance to meet the requirements of the SOW.

###### Criterion 2-Experience

The Offeror will be evaluated on its relevant experience in performing work comparable to the SOW.

###### Criterion 3-Past Performance

The Offeror's record of past performance will be evaluated on the extent of the Offeror's relevant success in performing work of similar size, scope, and complexity to that required by the SOW and other terms and conditions of the solicitation. The Past Performance Survey (See Section L, Attachment L-1) will be used to collect information regarding past performance; however, the Government may consider information from any source, and may conduct evaluations based on any number of returned Past Performance Surveys. The Government has no obligation to contact any or all references.

In the case of an Offeror without a record of relevant past performance for whom information on past performance is not available, the Offeror will not be evaluated favorably or unfavorably on past performance.

**Criterion 4-Business Management**

Evaluation of the Offeror's business management capability will be based on the Subcriteria listed as follows:

**Subcriterion (a) Management Capability and Approach**

The Offeror will be evaluated on its proposed approach to managing the contract to comply with the requirements of this solicitation. This includes, but is not limited to, the proposed organizational structure, lines of authority, levels of management, planning, and scheduling.

**Subcriterion (b)-Personnel Resources**

The Offeror will be evaluated on the qualifications and experience of the proposed Transport System design; fabrication and certification team leads.

**Subcriterion (c)-Small Business Subcontracting Opportunities**

The Offeror's proposed Small Business Subcontracting Plan will be evaluated regarding the participation of Small Disadvantaged Businesses.

**b. RANKING OF EVALUATION CRITERIA**

The Technical and Business Management Proposal is significantly more important than the Cost / Price Proposal. However, cost / price are a substantial element of the evaluation.

For the purpose of this evaluation, a total of 1000 points are possible. The point values of the areas are as follows:

	Numerical Weight %
Criterion 1- Technical Capability	50%
-Subcriterion (a)	35%
-Subcriterion (b)	15%
Criterion 2- Experience	20%
Criterion 3 Past Performance	15%
Area C- General Business	15%
-Subcriterion (a)- Management Approach	5%
-Subcriterion (b)- Personnel Resources	5%
-Subcriterion (c)- Small Business	5%

**c. COST/PRICE CRITERIA**

The cost/price evaluation will not be weighted nor will it be point scored or adjectivally rated. However, the cost/price information will be considered in the overall evaluation.

The Offeror's proposed prices for all CLINs will be reviewed for reasonableness and realism. DOE will review for unbalanced line item pricing. DOE will determine an evaluated probable cost to the Government for each procurement method by summing the extended prices for all CLINs for the base period and all options under each price schedule. An Offeror's evaluated probable cost may also be adjusted for

price related factors that would impact the total cost to the Government for this contract. (Transportation costs from DOE transport carrier's location to the Offeror's location, and / or from the Offeror's location to the TVA Reactor Facilities, and / or from the TEF to the Offeror's facility are examples of a price-related factor.) The estimated quantities provided in the price schedules will be used for evaluation purposes and will serve as the basis for determining extended prices for those CLINs with unit prices. The total evaluated probable cost to the Government will be calculated individually for both price schedules.

For evaluated probable cost purposes, the extended price utilized for CLIN 013 will be based on an order point predetermined by DOE prior to receipt of proposals. The predetermined order point will be based on DOE's assessment of the most likely point at which CLIN 013 will be exercised. That is, the number of units of Transportation System Usage (CLIN 006) ordered prior to exercising the option to purchase the transport system. This order point will be the same for all offerors.

The unit prices for CLINs to which an economic price adjustment applies will be adjusted to reflect projected point changes in the (TBD) index in accordance with the formula established for calculating the economic price adjustment in Clause B.9. The (TBD) Index in effect as of the date of issuance of the RFP will be used to calculate the projected point changes.

[End of Provision]

#### **M.4 BASIS FOR AWARD**

The Government intends to award a contract resulting from this solicitation to the responsible Offeror whose proposal is responsive to the solicitation and is determined to be the best value to the Government. Selection of the best value will be achieved through a process of evaluating strengths and weaknesses of each Offeror's proposal in accordance with the evaluation criteria stated in the solicitation. The Government will assess whether the strengths and weaknesses between or among competing technical and business proposals indicates a superiority from the standpoint of: (1) what the difference might mean in terms of anticipated performance; and (2) what the evaluated price and cost to the Government would be to take advantage of the difference.

DOE will also select the procurement method (purchase services of the Transport System or purchase the actual Transport System(s) whichever is considered in the best interest of the Government.

