

**AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**

1. CONTRACT ID CODE

PAGE OF PAGES

1 3

2. AMENDMENT/MODIFICATION NO. 074	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 Richland WA 99352	CODE 00603	7. ADMINISTERED BY (If other than Item 6) Office of River Protection U.S. Department of Energy Office of River Protection P.O. Box 450 MS: H6-60 Richland WA 99352	CODE 00603

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

WASHINGTON RIVER PROTECTION SOLUTIONS LLC  
Attn: DUANE SCHMOKER  
PO BOX 73  
720 PARK BLVD  
BOISE ID 837290001

(x) 9A. AMENDMENT OF SOLICITATION NO.
9B. DATED (SEE ITEM 11)
x 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC27-08RV14800
10B. DATED (SEE ITEM 13) 05/29/2008

CODE 806500521	FACILITY CODE
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**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

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

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

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

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
x	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Clause I.103, FAR 52.243-2 Changes - Cost Reimbursement (Aug 1987)
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not.  is required to sign this document and return 1 copies to the issuing office.

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

This supplemental agreement is the final modification to definitize the price of work funded by American Recovery and Reinvestment Act (ARRA) appropriations.

(Continued on page 2).

Period of Performance: 06/20/2008 to 09/30/2013

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

15A. NAME AND TITLE OF SIGNER (Type or print) <i>Abel B. Denning / Contract Manager</i>	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Susan E. Bechtol
15B. CONTRACTOR/OFFEROR <b>ORIGINAL SIGNED BY</b> <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED <i>9/29/10</i>
16B. UNITED STATES OF AMERICA	16C. DATE SIGNED 09/27/2010
<b>ORIGINAL SIGNED BY</b> <i>(Signature of Contracting Officer)</i>	

1. The purpose of this contract modification is to definitize the remaining \$478,204 of ARRA funding obligated to the contract in previous contract change orders. This modification changes the funding source for work that is already priced in the contract and moves FY 2011 base funded scope to ARRA funded scope for two projects that will be partially funded with ARRA funds (previously undefinitized), and partially funded by cost under runs from previously definitized and priced ARRA projects, and/or from base Tank Farm Operation funds.

The two additional projects authorized for ARRA funds are identified below.

5.1.4.1.1.6	242-A Manual Flush Valve	\$334,000
5.1.4.1.1.10	242-A Control Valve Upgrades	\$145,000

2. Section B, Supplies or Services and Prices/Costs, is revised to incorporate the transfer of costs from CLIN 1.2 to CLIN 7.1. No additional cost or fee is added to the contract for this work, since the scope is already priced (cost and fee) in the contract. ARRA funds will be used for the cost to perform the work. Therefore, \$478,204 of estimated cost will be moved from CLIN 1.2 to CLIN 7.1. The fee associated with the costs will remain in the "base" contract fee pool. The Contractor is hereby authorized to process a baseline change request to incorporate this change in the Performance Management Baseline.

Section B, Table B.4-1, Contract Cost and Contract Fee, is updated to reduce the estimated costs of CLIN 1.2 and increase the estimated costs of CLIN 7.1 to reflect this change. The Fee Pool remains unchanged. The total contract value remains unchanged.

The FY 2011 cost for CLIN 1.2 is changed from \$125,833 to \$125,354.

The FY 2011 cost for CLIN 7.1 is changed from \$63,201 to \$63,680.

The dollars in the B.4-1 table are stated "in thousands" and due to rounding on previous ARRA contract modifications, the change to the B.4-1 Table on this modification is "plus and minus \$479K" to be consistent with B.4-1 rounding adjustments on previous modifications and the total amount of ARRA funds obligated to the contract.

3. Section I, Contract Clauses, is revised to change the dollar amount the Contractor is authorized to spend on Recovery Act projects under clause I.24A, FAR 52.216-24, Limitation of Government Liability (APR 1984). The amount is changed from \$323,376,000 to \$323,855,000.
4. The following changes are hereby made to the contract:
  - a. Section B, pages B-6 through B-8, Modification 74 (Attachment 1 to this modification) replaces Section B pages B-6, B-7 and B-8 of the contract (3 pages total).
  - b. Section I, page I-11, Modification 74 (Attachment 2 to this modification) replaces Section I page I-11 of the contract. (1 page total).
5. All other terms and conditions remain unchanged.
6. By signing this modification the Contractor hereby acknowledges the following:

Contractor's Statement of Release: In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's American Reinvestment and Recovery Act (Recovery Act) proposal dated July 13, 2009 (Contract Modifications 15 and 20) and proposals dated March 22, 2010 and June 16, 2010 (Contract Modification 42), "proposals for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" except for those adjustments resulting from the DCAA audit reports on the Contractor's Recovery Act proposals, in accordance with contract clause H.47(d).

**Attachment 1**

**Replacement pages for Section B, Supplies or Services and Prices/Costs, Modification 74 (3 pages total).**

Table B.4-1, Contract Cost and Contract Fee  
 (\$'s in K)

Transition Period – FY 2008							
CLIN 1 Base Operations	Sub-CLIN 1.1	5,494					
	Contract Cost	5,494					
Totals	Contract Price	5,494					
Base Period							
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Totals
<b>CLIN 1 Base Operations</b>	Sub-CLIN 1.2	126,823	124,666	<u>125,354</u>	134,914	147,996	<u>659,753</u>
	Sub-CLIN 1.3	14,120	14,379	<u>16,681</u>	17,434	17,899	80,513
<b>CLIN 2 SST Retrieval and Closure</b>	Sub-CLIN 2.1	39,375	27,939	42,292	55,615	66,336	231,557
	Sub-CLIN 2.2	7,434	9,970	6,552	17,389	11,927	53,272
<b>CLIN 3 WTP Support</b>	Sub-CLIN 3.1	9,605	14,549	20,816	17,553	21,056	83,579
	Sub-CLIN 3.2	3,045	3,115	3,187	3,247	3,335	15,929
	Sub-CLIN 3.3	926	0	830	4,272	1,350	7,378
	Sub-CLIN 3.4	16,536	17,333	23,879	19,024	15,145	91,917
<b>CLIN 4 Supplemental Treatment</b>	Sub-CLIN 4.1	49,228	37,388	19,799	13,895	4,689	124,999
	Sub-CLIN 4.2	0	0	22	308	6,353	6,683
	Sub-CLIN 4.3	0	101	382	389	9,149	10,021
	Sub-CLIN 4.4	0	104	396	471	676	1,647
	Sub-CLIN 4.5	9,533	5,686	17,008	9,751	9,932	51,910
<b>CLIN 5 Early Feed and Operation of WTP LAW Facility</b>	Sub-CLIN 5.1	34,118	6,848	2,674	1,973	2,648	48,261
	Sub-CLIN 5.2	0	34,417	49,008	43,452	35,379	162,256
	Sub-CLIN 5.3	0	0	0	0	0	0
	Sub-CLIN 5.4	0	0	0	0	0	0
<b>CLIN 6 Pension and Welfare Plans</b>	Sub-CLIN 6.1	20,036	21,877	23,836	25,948	27,376	119,073
	Sub-CLIN 6.2	105,842	112,696	120,939	127,189	123,003	589,669
<b>Base Contract Sub-Totals</b>	<b>Contract Cost</b>	436,621	431,068	<u>473,655</u>	492,824	504,429	<u>2,338,417</u>
	<b>Available Fee</b>	15,675	24,164	21,843	26,701	22,993	111,376
	<b>Contract Price</b>	452,296	455,232	<u>495,498</u>	519,525	527,242	<u>2,449,793</u>
<b>CLIN 7 American Recovery and Reinvestment Act (ARRA) Workslope</b>	Sub-CLIN 7.1	29,362	89,029	<u>63,680</u>	0	0	<u>182,071</u>
	Sub-CLIN 7.2	2,661	17,260	11,791	0	0	31,712
	Sub-CLIN 7.3	5,756	26,731	26,448	0	0	58,935
	Sub-CLIN 7.4	0	0	0	0	0	0
	Sub-CLIN 7.5	539	6,943	3,268	0	0	10,750
	Sub-CLIN 7.6	0	10,832	7,213	0	0	18,045
<b>ARRA Sub-Totals</b>	<b>ARRA Cost</b>	38,318	150,795	<u>112,400</u>	0	0	<u>301,513</u>
	<b>ARRA Fee</b>	2,853	11,180	8,309	0	0	22,342
	<b>ARRA Price</b>	41,171	161,975	<u>120,709</u>	0	0	<u>323,855</u>
<b>Total Contract Price</b>	<b>Contract Cost</b>	474,939	581,863	586,055	492,824	504,249	2,639,930
	<b>Available Fee</b>	18,528	35,344	30,152	26,701	22,993	133,718
	<b>Contract Price</b>	493,467	617,207	616,207	519,525	527,242	2,773,648

Table B.4-1, Contract Cost and Contract Fee (continued)

		Option Period 1			Totals
		FY 2014	FY 2015	FY 2016	
<b>CLIN 1</b> <b>Base</b> <b>Operations</b>	Sub-CLIN 1.2	141,852	100,932	140,899	383,683
	Sub-CLIN 1.3	17,860	18,271	15,561	51,692
<b>CLIN 2</b> <b>SST Retrieval and Closure</b>	Sub-CLIN 2.1	53,361	62,089	73,809	189,259
	Sub-CLIN 2.2	13,087	13,619	7,172	33,878
<b>CLIN 3</b> <b>WTP Support</b>	Sub-CLIN 3.1	23,597	17,359	19,307	60,263
	Sub-CLIN 3.2	3,412	3,220	3,307	9,939
	Sub-CLIN 3.3	3,676	17,845	35,469	56,990
	Sub-CLIN 3.4	15,801	15,530	8,561	39,892
<b>CLIN 4</b> <b>Supplemental Treatment</b>	Sub-CLIN 4.1	0	0	0	0
	Sub-CLIN 4.2	8,559	17,298	17,745	43,602
	Sub-CLIN 4.3	12,086	22,176	33,154	67,416
	Sub-CLIN 4.4	8,002	45,545	284,921	338,468
	Sub-CLIN 4.5	3,409	2,944	0	6,353
<b>CLIN 5</b> <b>Early Feed and Operation</b> <b>of WTP LAW</b> <b>Facility</b>	Sub-CLIN 5.1	436	0	0	436
	Sub-CLIN 5.2	10,092	21,416	21,908	53,416
	Sub-CLIN 5.3	0	0	0	0
	Sub-CLIN 5.4	90,880	124,209	127,237	342,326
<b>CLIN 6</b> <b>Pension and Benefit Plans</b>	Sub-CLIN 6.1	29,972	32,846	36,029	98,847
	Sub-CLIN 6.2	119,377	116,094	113,495	348,966
<b>Base Contract Totals</b>	<b>Contract Cost</b>	555,459	631,393	938,574	2,125,426
	<b>Available Fee</b>	TBD by DOE	TBD by DOE	TBD by DOE	114,963
	<b>Contract Price</b>	Total	Total	Total	2,240,389

		Option Period 2		
		FY 2017	FY 2018	Totals
<b>CLIN 1</b> <b>Base Operations</b>	Sub-CLIN 1.2	177,027	171,257	348,284
	Sub-CLIN 1.3	13,881	14,543	28,424
<b>CLIN 2</b> <b>SST Retrieval and Closure</b>	Sub-CLIN 2.1	69,902	43,482	113,384
	Sub-CLIN 2.2	3,783	2,357	6,140
<b>CLIN 3</b> <b>WTP Support</b>	Sub-CLIN 3.1	9,705	4,009	13,714
	Sub-CLIN 3.2	3,356	3,420	6,776
	Sub-CLIN 3.3	25,165	19,552	44,717
	Sub-CLIN 3.4	13,086	17,239	30,325
<b>CLIN 4</b> <b>Supplemental Treatment</b>	Sub-CLIN 4.1	0	0	0
	Sub-CLIN 4.2	18,102	9,790	27,892
	Sub-CLIN 4.3	0	0	0
	Sub-CLIN 4.4	448,611	268,471	717,082
	Sub-CLIN 4.5	0	0	0
<b>CLIN 5</b> <b>Early Feed and Operation of WTP LAW Facility</b>	Sub-CLIN 5.1	0	0	0
	Sub-CLIN 5.2	22,412	22,928	45,340
	Sub-CLIN 5.3	0	0	0
	Sub-CLIN 5.4	131,281	134,315	265,596
<b>CLIN 6</b> <b>Pension and Benefit Plans</b>	Sub-CLIN 6.1	39,561	43,479	83,040
	Sub-CLIN 6.2	111,372	109,543	220,915
<b>Base Contract Totals</b>	<b>Contract Cost</b>	1,087,244	864,385	1,951,629
	<b>Available Fee</b>	TBD by DOE	TBD by DOE	114,161
	<b>Contract Price</b>	Total	Total	2,065,790

Contract Totals		
<b>Total: Transition, Base &amp; Option Periods</b>	<b>Contract Cost</b>	6,772,479
	<b>Available Fee</b>	362,842
	<b>Contract Price</b>	7,085,321

**PART I – THE SCHEDULE**

**SECTION B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

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## B.1 TYPE OF CONTRACT

This is a performance-based Cost-Plus-Award Fee Contract to directly support the environmental clean-up mission with a fee structure that provides a strong financial motivation for the Contractor to furnish safe, compliant, cost-effective and energy-efficient services to further the U.S. Department of Energy (DOE) Office of River Protection (ORP) mission to store, retrieve and treat Hanford tank waste, store and dispose of treated waste, and close the tank farm waste management areas to protect the Columbia River.

## B.2 ITEM(S) BEING ACQUIRED

- (a) The Contractor shall, in accordance with the terms of this Contract (Contract refers solely to the Tank Operations Contract), provide the personnel, equipment, materials, supplies, and services, and do all things necessary for, or incident to, providing its best efforts to perform all requirements of this Contract.
- (b) For purposes of cost collection, reporting, work authorization, and administration of the Contract fee structure, the Contract consists of 23 activities divided among six (7) Contract Line Item Numbers (CLINs) and authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work*. The activities identified below are further defined in Section J Attachment entitled, *Supplemental Work Description Tables*:
  - (1) *CLIN 1 – Base Operations*:
    - a. Sub-CLIN 1.1: Transition;
    - b. Sub-CLIN 1.2: Safe, Compliant Operations; and
    - c. Sub-CLIN 1.3: Analytical Laboratory Support.
  - (2) *CLIN 2 – Single-Shell Tank (SST) Retrieval and Closure*:
    - a. Sub-CLIN 2.1: Single-Shell Tank Retrieval; and
    - b. Sub-CLIN 2.2: Single-Shell Tank Farm (Waste Management Area) Closure.
  - (3) *CLIN 3 – Waste Treatment and Immobilization Plant (WTP) Support*:
    - a. Sub-CLIN 3.1: Treatment Planning, Waste Feed Delivery, and WTP Transition;
    - b. Sub-CLIN 3.2: WTP Operational Readiness;
    - c. Sub-CLIN 3.3: Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction; and
    - d. Sub-CLIN 3.4: Upgrade and Operate the Effluent Treatment Facility (ETF).
  - (4) *CLIN 4 – Supplemental Treatment*:
    - a. Sub-CLIN 4.1: Demonstration Bulk Vitrification System (DBVS) Construction and Operations;

- b. Sub-CLIN 4.2: Extended Demonstration Bulk Vitrification System Operations;
  - c. Sub-CLIN 4.3: Supplemental Treatment Design
  - d. Sub-CLIN 4.4: Supplemental Treatment Construction and Operations
  - e. Sub-CLIN 4.5: Transuranic Tank Waste Treatment and Packaging.
- (5) *CLIN 5 – Early Feed and Operation of the WTP Low Activity Waste (LAW) Facility:*
- a. Sub-CLIN 5.1: Tank Selection, Retrieval, Pretreatment and Feed Delivery Design;
  - b. Sub-CLIN 5.2: Retrieval, Pretreatment and Feed Delivery Construction and Operations;
  - c. Sub-CLIN 5.3: (moved to Sub-CLIN 3.4)
  - d. Sub-CLIN 5.4: LAW/BOF/LAB Operations.
- (6) *CLIN 6 – Pension and Welfare Plans:*
- a. Sub-CLIN 6.1: Hanford Employee Retirement and Benefit Plan Management; and
  - b. Sub-CLIN 6.2: Legacy Pension and Benefit Plan Management.
- (7) *CLIN 7 – American Recovery and Reinvestment Act (ARRA) Workscope:*
- a. Sub-CLIN 7.1: ARRA workscope under Sub-CLIN 1.2 – Safe, Compliant Operations;
  - b. Sub-CLIN 7.2: ARRA workscope under Sub-CLIN 1.3 – Analytical Laboratory Support;
  - c. Sub-CLIN 7.3: ARRA workscope under Sub-CLIN 3.1 – Treatment Planning, Waste Feed Delivery, and WTP Transition; and
  - d. Sub-CLIN 7.4: ARRA workscope under Sub-CLIN 3.3 – Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction
  - e. Sub-CLIN 7.5: ARRA workscope under Sub-CLIN 3.4 - Upgrade and Operate the Effluent Treatment Facility (ETF).
  - f. Sub-CLIN 7.6: ARRA workscope under Sub-CLIN 2.1 Single Shell Tank (SST) Retrieval and Closure

### **B.3 OBLIGATION AND AVAILABILITY OF FUNDS**

- (a) Obligation of Funds. Pursuant to the Section I Clause entitled, FAR 52.232-22 Limitation of Funds, total funds in the amount of \$1,184,305,412.41ve been allotted for obligation and are available for payment of services provided from the effective date of the Notice to Proceed through September 30, 2013.

Of the total identified above, \$323,855,000.00 in Recovery Act funds have been allotted for obligation and are available for payment of services provided from the effective date of this modification through September 30, 2011. (Subject to Section I clause 52.216-24 Limitation of Government Liability) and \$860,450,412.41 in non-Recovery Act funds are

available for payment of services through September 30, 2013

- (b) Availability of Funds. Except as may be specifically provided in the Section I Clause entitled, *DEAR 952.250-70, Nuclear Hazards Indemnity Agreement*, the duties and obligations of DOE hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.
- (c) No fee shall be paid to the contractor for the Recovery Act work, including provisional, prior to the negotiation of any equitable adjustment in the fee and the subsequent modification of the contract to reflect the mutual agreement between the contractor and the Contracting Officer.

#### **B.4 CONTRACT COST AND CONTRACT FEE**

This Section establishes the *Total Contract Cost* and *Contract Fee*. Within Table B.4-1:

- (a) *Contract Period* is defined as the *Transition Period, Base Period, and Option Period(s)* (if exercised) described in the Section F Clause entitled, *Period of Performance*.
- (b) *Contract Cost* is defined as all costs initially proposed by the Contractor.
- (c) *Available Fee* is defined as the maximum amount of fee that may be earned under the Contract by Contract period.
- (d) *Contract Price* in Table B.4-1 is the sum of *Contract Cost* and *Available Fee*, in each year of Contract performance.
- (e) *Total Contract Cost* is defined as the cumulative *Contract Cost* for all Contract periods.
- (f) *Total Available Fee* is defined as the cumulative *Available Fee* for all Contract periods.
- (g) *Total Contract Price* is defined as the sum of *Total Contract Cost* and *Total Available Fee*.
- (h) *Contract Line Item Number (CLIN)* references a specific category of work as defined in the Section C, *Statement of Work*. Proposed costs shall be appropriately categorized into the individual CLINs in Table B.4-1.
- (i) *Contract Cost, Contract Price, and Available Fee* by Fiscal Year and by Sub-CLIN will be adjusted annually by the Contracting Officer upon approval of the Performance Measurement Baseline, and whenever changes affecting the table are made under the Section I Clause entitled, *Changes – Cost Reimbursement*.

#### **B.5 CHANGES TO CONTRACT COST AND CONTRACT FEE**

- (a) Funding.
  - (1) DOE intends to obligate funding to the Contract in accordance with the *Contract Price* shown by fiscal year in Table B.4-1, *Contract Cost and Contract Fee*. The Contractor shall not be entitled to an equitable adjustment to *Available Fee* if the obligated funding by fiscal year is within 10% of the amount shown in Table B.4-1.

- (2) If DOE does not obligate funding within the parameters detailed in paragraph (a)(1) above, the Contracting Officer may initiate a change or consider a request for an equitable adjustment to the *Contract Price* and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*
- (b) Performance Risk.
- (1) Changes to *Total Available Fee* will accurately reflect the corresponding changes to the Contract with respect to performance risk as determined by DEAR 915.404-4-70, DOE structured profit and fee system and implemented by the profit-analysis factors defined in FAR 15.404-4, *Profit*. Accordingly, changes to the Contract resulting in an increase or decrease to the Contractor's performance risk as defined in FAR 15.404-4(d)(1), shall cause a proportionate increase or decrease to the *Total Available Fee*.
  - (2) If performance risk changes, the Contracting Officer may initiate a change or consider a request for equitable adjustment to Contract Price and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.*

Table B.4-1, Contract Cost and Contract Fee  
 (\$'s in K)

Transition Period – FY 2008							
CLIN 1 Base Operations	Sub-CLIN 1.1	5,494					
	Contract Cost	5,494					
Totals	Contract Price	5,494					
	Base Period						
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Totals
CLIN 1 Base Operations	Sub-CLIN 1.2	126,823	124,666	125,354	134,914	147,996	659,753
	Sub-CLIN 1.3	14,120	14,379	16,681	17,434	17,899	80,513
CLIN 2 SST Retrieval and Closure	Sub-CLIN 2.1	39,375	27,939	42,292	55,615	66,336	231,557
	Sub-CLIN 2.2	7,434	9,970	6,552	17,389	11,927	53,272
CLIN 3 WTP Support	Sub-CLIN 3.1	9,605	14,549	20,816	17,553	21,056	83,579
	Sub-CLIN 3.2	3,045	3,115	3,187	3,247	3,335	15,929
	Sub-CLIN 3.3	926	0	830	4,272	1,350	7,378
CLIN 4 Supplemental Treatment	Sub-CLIN 3.4	16,536	17,333	23,879	19,024	15,145	91,917
	Sub-CLIN 4.1	49,228	37,388	19,799	13,895	4,689	124,999
	Sub-CLIN 4.2	0	0	22	308	6,353	6,683
	Sub-CLIN 4.3	0	101	382	389	9,149	10,021
	Sub-CLIN 4.4	0	104	396	471	676	1,647
CLIN 5 Early Feed and Operation of WTP LAW Facility	Sub-CLIN 4.5	9,533	5,686	17,008	9,751	9,932	51,910
	Sub-CLIN 5.1	34,118	6,848	2,674	1,973	2,648	48,261
	Sub-CLIN 5.2	0	34,417	49,008	43,452	35,379	162,256
	Sub-CLIN 5.3	0	0	0	0	0	0
	Sub-CLIN 5.4	0	0	0	0	0	0
CLIN 6 Pension and Welfare Plans	Sub-CLIN 6.1	20,036	21,877	23,836	25,948	27,376	119,073
	Sub-CLIN 6.2	105,842	112,696	120,939	127,189	123,003	589,669
Base Contract Sub-Totals	Contract Cost	436,621	431,068	473,655	492,824	504,429	2,338,417
	Available Fee	15,675	24,164	21,843	26,701	22,993	111,376
	Contract Price	452,296	455,232	495,498	519,525	527,242	2,449,793
CLIN 7 American Recovery and Reinvestment Act (ARRA) Workscope	Sub-CLIN 7.1	29,362	89,029	63,680	0	0	182,071
	Sub-CLIN 7.2	2,661	17,260	11,791	0	0	31,712
	Sub-CLIN 7.3	5,756	26,731	26,448	0	0	58,935
	Sub-CLIN 7.4	0	0	0	0	0	0
	Sub-CLIN 7.5	539	6,943	3,268	0	0	10,750
	Sub-CLIN 7.6	0	10,832	7,213	0	0	18,045
ARRA Sub-Totals	ARRA Cost	38,318	150,795	112,400	0	0	301,513
	ARRA Fee	2,853	11,180	8,309	0	0	22,342
	ARRA Price	41,171	161,975	120,709	0	0	323,855
Total Contract Price	Contract Cost	474,939	581,863	586,055	492,824	504,249	2,639,930
	Available Fee	18,528	35,344	30,152	26,701	22,993	133,718
	Contract Price	493,467	617,207	616,207	519,525	527,242	2,773,648

Table B.4-1, Contract Cost and Contract Fee (continued)

		Option Period 1			
		FY 2014	FY 2015	FY 2016	Totals
<b>CLIN 1</b> <b>Base Operations</b>	Sub-CLIN 1.2	141,852	100,932	140,899	383,683
	Sub-CLIN 1.3	17,860	18,271	15,561	51,692
<b>CLIN 2</b> <b>SST Retrieval and Closure</b>	Sub-CLIN 2.1	53,361	62,089	73,809	189,259
	Sub-CLIN 2.2	13,087	13,619	7,172	33,878
<b>CLIN 3</b> <b>WTP Support</b>	Sub-CLIN 3.1	23,597	17,359	19,307	60,263
	Sub-CLIN 3.2	3,412	3,220	3,307	9,939
	Sub-CLIN 3.3	3,676	17,845	35,469	56,990
	Sub-CLIN 3.4	15,801	15,530	8,561	39,892
<b>CLIN 4</b> <b>Supplemental Treatment</b>	Sub-CLIN 4.1	0	0	0	0
	Sub-CLIN 4.2	8,559	17,298	17,745	43,602
	Sub-CLIN 4.3	12,086	22,176	33,154	67,416
	Sub-CLIN 4.4	8,002	45,545	284,921	338,468
	Sub-CLIN 4.5	3,409	2,944	0	6,353
<b>CLIN 5</b> <b>Early Feed and Operation of WTP LAW Facility</b>	Sub-CLIN 5.1	436	0	0	436
	Sub-CLIN 5.2	10,092	21,416	21,908	53,416
	Sub-CLIN 5.3	0	0	0	0
	Sub-CLIN 5.4	90,880	124,209	127,237	342,326
<b>CLIN 6</b> <b>Pension and Benefit Plans</b>	Sub-CLIN 6.1	29,972	32,846	36,029	98,847
	Sub-CLIN 6.2	119,377	116,094	113,495	348,966
<b>Base Contract Totals</b>	<b>Contract Cost</b>	555,459	631,393	938,574	2,125,426
	<b>Available Fee</b>	TBD by DOE	TBD by DOE	TBD by DOE	114,963
	<b>Contract Price</b>	Total	Total	Total	2,240,389

<b>Option Period 2</b>				
		<b>FY 2017</b>	<b>FY 2018</b>	<b>Totals</b>
<b>CLIN 1 Base Operations</b>	Sub-CLIN 1.2	177,027	171,257	348,284
	Sub-CLIN 1.3	13,881	14,543	28,424
<b>CLIN 2 SST Retrieval and Closure</b>	Sub-CLIN 2.1	69,902	43,482	113,384
	Sub-CLIN 2.2	3,783	2,357	6,140
<b>CLIN 3 WTP Support</b>	Sub-CLIN 3.1	9,705	4,009	13,714
	Sub-CLIN 3.2	3,356	3,420	6,776
	Sub-CLIN 3.3	25,165	19,552	44,717
<b>CLIN 4 Supplemental Treatment</b>	Sub-CLIN 3.4	13,086	17,239	30,325
	Sub-CLIN 4.1	0	0	0
	Sub-CLIN 4.2	18,102	9,790	27,892
	Sub-CLIN 4.3	0	0	0
	Sub-CLIN 4.4	448,611	268,471	717,082
<b>CLIN 5 Early Feed and Operation of WTP LAW Facility</b>	Sub-CLIN 4.5	0	0	0
	Sub-CLIN 5.1	0	0	0
	Sub-CLIN 5.2	22,412	22,928	45,340
	Sub-CLIN 5.3	0	0	0
	Sub-CLIN 5.4	131,281	134,315	265,596
<b>CLIN 6 Pension and Benefit Plans</b>	Sub-CLIN 6.1	39,561	43,479	83,040
	Sub-CLIN 6.2	111,372	109,543	220,915
<b>Base Contract Totals</b>	<b>Contract Cost</b>	1,087,244	864,385	1,951,629
	<b>Available Fee</b>	TBD by DOE	TBD by DOE	114,161
	<b>Contract Price</b>	Total	Total	2,065,790

<b>Contract Totals</b>		
<b>Total: Transition, Base &amp; Option Periods</b>	<b>Contract Cost</b>	6,772,479
	<b>Available Fee</b>	362,842
	<b>Contract Price</b>	7,085,321

## B.6 BASIS FOR TOTAL AVAILABLE FEE

The cost basis for *Total Available Fee* shall be the *Total Contract Cost*, excluding:

- (a) Pass-through funding provided to other contractors for Hanford Site services identified in the Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*;
- (b) Costs associated with sponsorship, management, administration and/or contributions for Legacy Plans (set forth in the Section H Clause entitled, *Employee Compensation: Pay and Benefits*) administered under this Contract; and
- (c) Costs associated with sponsorship, management, administration and/or contributions for any defined benefit pension plan.

Employee benefit plan costs shall be included in the *Contract Price* by fiscal year and by Contract period shown in Table B.4-1, *Contract Cost and Contract Fee*.

## B.7 FEE STRUCTURE

- (a) The Contracting Officer reserves the unilateral discretion to determine the amount of *Available Fee* for the *Base Period* and *Option Period(s)* (if exercised), to each fiscal year and Sub-CLIN as described in this Clause; and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor will have the opportunity to earn 100% of the *Available Fee* within a Contract period, for work authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work* and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*.
- (b) The *Available Fee* shown in Table B.4-1, *Contract Cost and Contract Fee*, can be earned through objective fee components and/or subjective fee components. The performance measures for these components and *Available Fee* for the period allocated to the fiscal year are provided in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan (PEMP)*. The PEMP may contain annual and multi-year performance measures.
  - (1) *Available Fee* for the period allocated to annual performance measures may only be earned in that fiscal year. Allocated *Available Fee* for the fiscal year not earned in the fiscal year for an annual performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.
  - (2) *Available Fee* for the period allocated to fiscal years for multi-year performance measures may be earned incrementally or upon final fee determination. Allocated *Available Fee* not earned for a multi-year performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

- (3) *Provisional Fee* is defined as *Available Fee* that is paid contingently during an annual performance period. *Provisional Fee* may become earned fee upon the final fee determination.
  - (4) *Incremental Fee* is defined as *Available Fee* that the Contractor may earn by achieving a specific, fee-bearing performance measure event, subject to withholding in accordance with Section B Clause entitled, Fee Determination and Payment.
  - (5) Individual performance measures may require the Contractor to exceed approved baseline performance to earn 100% of the fee allocated to that performance measure.
- (c) The Contracting Officer will prepare and issue performance measures prior to the start of each fiscal year. The Contracting Officer may provide draft performance measures for Contractor review and input; however, the Contracting Officer reserves the unilateral discretion to issue the performance measures without Contractor review.

#### **B.8 FEE DETERMINATION AND PAYMENT**

- (a) Fee earned under this Contract will be paid in accordance with the specific criteria defined in the PEMP and the Clauses in Section B. Monthly provisional payments of fee may be authorized by the Contracting Officer and will be made in accordance with paragraph (b) of this Clause.
- (b) For annual performance measures that do not have specific, incremental, fee-bearing performance measure events, the Contractor may request Contracting Officer approval to execute a monthly draw of *Provisional Fee* payments from the Special Financial Institution Account. The Contractor may request a monthly *Provisional Fee* payment of up to 7.5% of fee allocated to such performance measures, subject to a maximum payment of 80% of fee allocated to such performance measures, and also subject to withholding by DOE as described in paragraphs (e) and (f) of this Clause.
- (c) The Contractor shall request Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event. Following Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event, the Contractor may request Contracting Officer approval to execute a draw of *Incremental Fee* from the Special Financial Institution Account, subject to withholding by the Contracting Officer as described in paragraphs (e) and (f) of this Clause and the Section B Clause entitled, *Fee Reductions*.
- (d) At the end of each year of Contract performance, the Fee Determining Official will make a final *Fee Determination* using the PEMP described in the Section B Clause entitled, *Fee Structure*. In the event that fee overpayment results from the *Provisional Fee* payments provided for in this Clause, the Contractor shall reimburse the unearned fee overpayment within 30 days of notification, to the Contracting Officer payable with interest in accordance with the Section I Clause entitled, *FAR 52.232-17, Interest*.
- (e) Withholding of *Incremental* and *Provisional Fee* Payments for adverse Contract Performance.

- (1) Withholding of *Incremental and Provisional Fee Payments*. If the Contractor demonstrates adverse performance, the Contracting Officer reserves the unilateral discretion to withhold *Incremental and Provisional Fee Payments*. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment*.
  - (2) Release of Withheld *Incremental and Provisional Fee Payments*. The Contracting Officer may release withheld *Incremental and Provisional Fee Payments* and resume making *Incremental and Provisional Fee Payments* when the Contractor demonstrates sustained recovery in performance.
- (f) Withholding of *Incremental and Provisional Fee Payments* for bankruptcy or other issues with guarantor company(ies)<sup>4</sup>.
- (1) Withholding of *Incremental and Provisional Fee*. In order to assure the Contractor's ability to repay any *Incremental and Provisional Fee Payments* that are determined to be in excess of the total fee earned, the Contracting Officer reserves the unilateral discretion to discontinue *Incremental and Provisional Fee* payments, in the event that a guarantor company files bankruptcy, is acquired by other owners, or impacted by other events that arise with the Contractor's guarantor company(ies) that can jeopardize DOE's ability to recover excess *Incremental Payment and Provisional Fee Payments*. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment*.
  - (2) Release of Withheld *Incremental and Provisional Fee Payments*. Following receipt of evidence that bankruptcy or other issues do not affect the ability of the Contractor to continue to perform the obligations under the Contract, the Contracting Officer may release all *Incremental and Provisional Fee Payments* and resume making *Incremental and Provisional Fee Payments*.

## B.9 FEE REDUCTIONS

- (a) All earned fee in each year of Contract performance is subject to reductions imposed by the terms and conditions of this Contract, including, but not limited to:
- (1) Section B Clause entitled, *Fee Determination and Payment*;
  - (2) Section B Clause entitled, *Small Business Subcontracting Fee Reduction*;
  - (3) Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [DEVIATION]*;
  - (4) Section B Clause entitled, *Conditional Payment of Fee (CPOF) DOE Office of River Protection Site-Specific Performance Criteria/Requirements*;
  - (5) Section E Clause entitled, *FAR 52.246-3, Inspection of Supplies – Cost Reimbursement*;

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<sup>4</sup> Guarantor Company(ies) is defined as the company(ies) executing the performance guarantee (s) in Section H Clause entitled, *Performance Guarantee Agreement*.

- (6) Section E Clause entitled, *FAR 52.246-5, Inspection of Services – Cost Reimbursement*;
  - (7) Section H Clause entitled, *Key Personnel*;
  - (8) Section I Clause entitled, *FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity*;
  - (9) Section I Clause entitled, *FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data – Modifications*;
  - (10) Section I Clause entitled, *FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications*; and
  - (11) Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement*.
- (b) The maximum fee reduction in any one (1) year of Contract performance is the allocated *Available Fee*, as defined in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan*, that can be earned in the year the event occurred.

**B.10 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION**

- (a) For the purpose of implementing this Clause, the percentage goals established in the Section J Attachment entitled, *Small Business Subcontracting Plan*, will remain in effect for the duration of the Contract, except as modified in accordance with the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor shall submit annual updates to the narrative elements of the *Small Business Subcontracting Plan* by December 31 of each year.
- (b) The Contractor's performance in meeting small business performance percentage goals in accordance with the Section H Clause entitled, *Self-Performed Work*, providing meaningful involvement for small businesses, and entering into the required Mentor-Protégé Agreement(s) will be evaluated after the:
- (1) Three year period concluding at the end of the 3<sup>rd</sup> year of Contract performance;
  - (2) Two year period concluding at the end of the 5<sup>th</sup> year of Contract performance; and, if *Option Period 1* is exercised;
  - (3) If *Option Period 1* is exercised – two year period concluding at the end of the 7<sup>th</sup> year of Contract performance; and
  - (4) At the end of the Contract period of performance.
- (c) The Contracting Officer will consider the Contractor's performance in meeting small business percentage goals and entering into the required Mentor-Protégé Agreement(s) when making a decision on the *Option Period(s)* authorization.

- (d) If the Contractor has not met any or all of the subcontracting goals, has failed to provide meaningful involvement for small business, and/or has failed to enter into the required Mentor-Protégé Agreement(s) during the above specified periods, the Contracting Officer may reduce the earned fee by an amount up to 10% of total earned fee in each period of the four (4) multi-year periods described above.
- (e) At Contract completion, the total amount of fee reduction for failure to meet its subcontracting goals shall be offset by any amount of liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.
- (f) Any reduction for failure to meet the requirements of the Section H Clause entitled, *Mentor-Protégé Program*, shall be in addition to any liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

#### **B.11 ALLOWABILITY OF SUBCONTRACTOR FEE**

- (a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.6, *Contractor Team Arrangements*, the team shall share in the *Total Available Fee* as shown in Table B.4-1. Separate additional subcontractor fee is not an allowable cost under this Contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.
- (b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section H Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms*.

#### **B.12 DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (ALTERNATE II) (JAN 2004) [DEVIATION]**

- (a) General.
  - (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this Contract is dependent upon:
    - (i) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to environment, safety, health and quality (ESH&Q), which includes worker safety and health, including performance under an approved Integrated Safety Management System (ISMS); and

- (ii) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information.
  - (2) The ESH&Q performance requirements of this Contract are set forth in its ESH&Q terms and conditions, including the DOE-approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ESH&Q compliance.
  - (3) The performance requirements of this Contract relating to the safeguarding of Restricted Data and other classified information are set forth in the Section I Clause entitled, *FAR 52.239-1, Privacy or Security Safeguards (AUG 1996)*, and *DEAR 970.5204-2, Laws, Regulations, and DOE Directives*, as well as in other terms and conditions.
  - (4) If the Contractor does not meet the performance requirements of this Contract relating to ESH&Q or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the Contract, otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by DOE.
- (b) Reduction Amount.
- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this Clause.
  - (2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.
  - (3) In determining the amount of the reduction and the applicability of mitigating factors, DOE will consider the Contractor's overall performance in meeting the ESH&Q or security requirements of the Contract. Such consideration will include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, DOE will consider mitigating factors that may warrant a reduction below the applicable range (see *48 CFR 970.1504-1-2*). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ESH&Q only).
    - (i) Degree of control the Contractor had over the event or incident.
    - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

- (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
  - (iv) General status (trend and absolute performance) of: ESH&Q and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.
  - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ESH&Q standards are routinely practiced (e.g., Voluntary Protection Program, ISO [International Organization for Standardization] 14000, *Environmental Management System Standards*).
  - (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., off-site emergency response).
  - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ESH&Q performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ESH&Q programs).
  - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ESH&Q by use of lessons-learned and best practices inter- and intra-DOE sites.
- (4)
- (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this Clause if it is determined that a performance failure warranting a reduction under this Clause occurs within the evaluation period.
  - (i) The amount of reduction under this Clause, in combination with any reduction made under any other clause in the Contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.
  - (iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by DOE or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the Contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

- (iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)
- (v) At the end of the Contract:
  - (A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
  - (B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)
- (c) Environment, Safety, Health and Quality (ESH&Q). Performance failures occur if the Contractor does not comply with the Contract ESH&Q terms and conditions, including the DOE-approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:
  - (1) First Degree: Performance failures that are most adverse to ESH&Q. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.
    - (i) Type A accident (defined in DOE Order 225.1A, *Accident Investigations*); and
    - (ii) Two (2) Second Degree performance failures during an evaluation period.
  - (2) Second Degree: Performance failures that are significantly adverse to ESH&Q. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

- (i) Type B accident (defined in DOE Order 225.1A).
  - (ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
  - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the Contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving ESH&Q. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per ~~DOE Order 232.1A~~ [DOE Manual 232.1A, *Occurrence Reporting and Processing of Operations Information*] requirements; or internal oversight of ~~DOE Order 440.1A~~ [10 CFR 830, 10 CFR 835, 10 CFR 850, and 10 CFR 851] requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.
  - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.
- (d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this Clause).
  - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
  - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
  - (iv) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
  - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (e) Minimum requirements for specified level of performance.
- (1) At a minimum the Contractor must perform the following:
- (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in Section C, *Statement of Work*, work authorization directive(s), or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
  - (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
  - (iii) All other requirements at a level of performance such that the total performance of the Contract is not jeopardized.

- (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in Section C, *Statement of Work*, work authorization directive(s), or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (f) Minimum requirements for cost performance.
- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
  - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
  - (3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

**B.13 CONDITIONAL PAYMENT OF FEE (CPOF) DOE OFFICE OF RIVER PROTECTION  
SITE-SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS**

This Clause supplements Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [Deviation]* by establishing Site specific Environment, Safety, Health, and Quality (ESH&Q), and security performance criteria/requirements. Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3. Site-specific performance criteria/requirements for ESH&Q, and Safeguards and Security are as follows:

- (a) Environment, Safety, Health, and Quality
- (1) First Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
  - (2) Second Degree: Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

- (3) Third Degree: Performance failures that reflect a lack of focus on ESH&Q or failures to comply with an approved ISMS that may result in a negative impact to the public, worker or environment. The following performance failures, or events of similar import, are examples of performance failures that are considered third degree:
  - (i) Multiple similar non-compliances identified by external oversight (e.g., Federal) that in the aggregate indicate a significant programmatic breakdown.
  - (ii) Non-compliances or adverse performance trends that either have or may have negative impact to the public, worker, or environment or that indicate a programmatic breakdown.
  - (iii) Failure to notify the Contracting Officer upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.
  - (iv) Failure to report required data accurately and in a timely manner.
  - (v) Failure to implement continuous improvement in ESH&Q performance through effective utilization of ISMS processes, including timely submittal of meaningful performance objectives, measurements and commitments.
  
- (b) Safeguards and Security
  - (1) First Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
  - (2) Second Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].
  - (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security, and/or jeopardizes protection of the facility or Site security interests. The following are examples of performance failures or performance failures of similar import that will be considered third degree:
    - (i) Loss, theft, diversion, or unauthorized disclosure of information classified as Confidential.
    - (ii) Evidence that SNM data has been manipulated or falsified.
    - (iii) Inventory differences of Category IV SNM beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.

- (iv) Loss, theft, or diversion of Category IV quantities of SNM that is due to a failure or inadequacy of performance by the contractor.
- (v) Receipt of any topical area rating of Unsatisfactory on any DOE Safeguards and Security survey, audit, and/or inspection.
- (vi) Failure to implement corrective action(s) in response to any third degree performance failure.
- (vii) Non-compliant or adverse cyber security performance that indicates serious cyber security program degradation (e.g., negative mission impacts or compromise of sensitive information [Sensitive Unclassified Information, Personally Identifiable Information, Unclassified Controlled Nuclear Information], etc.).

#### **B.14 DOE AUTHORIZATION OF WORK**

DOE will authorize work as follows:

- (a) The Contracting Officer will authorize the Contractor to begin performance on DOE-selected Sub-CLINS.
- (b) The Contractor is authorized to conduct work in accordance with the approved *Performance Measurement Baseline* on all authorized Sub-CLINS, and subject to the limitations of the Section B Clause entitled, *Obligation and Availability of Funds*.
- (c) Prior to the completion of the *Transition Period*, DOE will provide workscope direction that will be in effect from the initiation of the *Base Period* until DOE approval of the Contractor's initial *Performance Measurement Baseline* submittal.
- (d) DOE reserves the unilateral discretion to modify the PEMP to allocate fee to the associated work.
- (e) If the Contracting Officer does not authorize the Contractor to proceed with a Sub-CLIN, the Contractor shall not be entitled to allowable costs, opportunity to earn fee, partial termination costs, and any other similar items for that Sub-CLIN, and shall not be entitled to an equitable adjustment to fee for any other Contract requirement.

**Attachment 2**

**Replacement page for Section I, Contract Clauses, Modification 74 (1 page total).**

**PART II - CONTRACT CLAUSES**

**SECTION I**

**CONTRACT CLAUSES**

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

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

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

<http://professionals.pr.doe.gov/>

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.2	FAR 52.202-1	Definitions (Jul 2004) as modified by DEAR 952.202-1 (Mar 2002)	None
I.3	FAR 52.203-3	Gratuities (Apr 1984)	None
I.4	FAR 52.203-5	Covenant Against Contingent Fees (Apr 1984)	None
I.5	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (Sept 2006)	None
I.6	FAR 52.203-7	Anti-Kickback Procedures (Jul 1995)	None
I.7	FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)	None
I.8	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)	None
I.8A	FAR 52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)	None
I.9	FAR 52.203-12	Limitations on Payments to Influence Certain Federal Transactions (Sept 2007)	None
I.9A	FAR 52.203-13	Business Ethics (DEC 2008)	None
I.10	FAR 52.204-4	Printed or Copied Double-Sided on Recycled Paper (Aug 2000)	None
I.11	FAR 52.204-7	Central Contractor Registration (Jul 2006)	None
I.12	FAR 52.204-9	Personal Identity Verification of Contractor Personnel (Sep 2007)	None
I.12A	FAR 52.204-11	American Recovery and Reinvestment Act—Reporting Requirements (July 2010)	Full Text
I.13	FAR 52.208-9	Contractor Use of Mandatory Sources of Supply or Services (Jul 2004)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.14	FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (Sept 2006)	None
I.15	FAR 52.215-2	Audit and Records – Negotiation (Jun 1999) Alt I (Mar 2009)	None
I.16	FAR 52.215-8	Order of Precedence – Uniform Contract Format (Oct 1997)	None
I.17	FAR 52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (Oct 1997)	None
I.18	FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (Oct 1997)	None
I.19	FAR 52.215-14	Integrity of Unit Prices (Oct 1997)	None
I.20	FAR 52.215-15	Pension Adjustments and Asset Reversions (Oct 2004)	None
I.21	FAR 52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997)	None
I.22	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Jul 2005)	None
I.23	FAR 52.215-19	Notification of Ownership Changes (Oct 1997) (see full text version in Section I)	None
I.24	FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct 1997) Alternate III (Oct 1997)	None
I.24A	FAR 52.216-24	Limitation of Government Liability (Apr 1984)	\$299,728,838.00
I.25	FAR 52.217-8	Option to Extend Services (Nov 1999)	180 to 30 days prior to the expiration date of this Contract
I.26	FAR 52.217-9	Option to Extend the Term of the Contract (Mar 2000)	(a) 180 days prior to the expiration date of this Contract  60  (c) 10 years excluding the Transition Period
I.27	FAR 52.219-4	Notice of Price Evaluation Preference for HUBZONE Small Business Concerns (Jul 2005)	(c) Offeror fill-in
I.28	FAR 52.219-8	Utilization of Small Business Concerns (May 2004)	None
I.29	FAR 52.219-9	Small Business Subcontracting Plan (APR 2008) – Alternate II (Nov 2007)	None
I.30	FAR 52.219-16	Liquidated Damages – Subcontracting Plan (Jan 1999)	None
I.31	FAR 52.219-25	Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (Oct 1999)	None
I.32	FAR 52.222-1	Notice to the Government of Labor Disputes (Feb 1997)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.33	FAR 52.222-2	Payment for Overtime Premiums (Jul 1990)	(a) The percentage specified in the Section H Clause entitled, <i>Overtime Control Plan</i>
I.34	FAR 52.222-3	Convict Labor (Jun 2003)	None
I.35	FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (Jul 2005)	None
I.36	FAR 52.222-6	Davis-Bacon Act (Jul 2005)	None
I.37	FAR 52.222-7	Withholding of Funds (Feb 1988)	None
I.38	FAR 52.222-8	Payrolls and Basic Records – Deviation(Nov 2009)	None
I.39	FAR 52.222-9	Apprentices and Trainees (Jul 2005)	None
I.40	FAR 52.222-10	Compliance with Copeland Act Requirements (Feb 1988)	None
I.41	FAR 52.222-11	Subcontracts (Labor Standards) (Jul 2005)	None
I.42	FAR 52.222-12	Contract Termination – Debarment (Feb 1988)	None
I.43	FAR 52.222-13	Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)	None
I.44	FAR 52.222-14	Disputes Concerning Labor Standards (Feb 1988)	None
I.45	FAR 52.222-15	Certification of Eligibility (Feb 1988)	None
I.46	FAR 52.222-16	Approval of Wage Rates (Feb 1988)	None
I.47	<i>Reserved</i>	<i>Reserved</i>	<i>Reserved</i>
I.48	FAR 52.222-20	Walsh-Healy Public Contracts Act (Dec 1996)	None
I.49	FAR 52.222-21	Prohibition of Segregated Facilities (Feb 1999)	None
I.50	FAR 52.222-26	Equal Opportunity (Mar 2007)	None
I.51	FAR 52.222-27	Affirmative Action Compliance Requirements for Construction (Feb 1999)	None
I.52	FAR 52.222-30	Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (Dec 2001)	None
I.53	FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)	None
I.54	FAR 52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998)	None
I.55	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)	None
I.56	FAR 52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) ( <i>see full text version in Section I</i> )	None
I.57	FAR 52.222-41	Service Contract Act of 1965, As Amended (Nov 2007)	None
I.58	FAR 52.222-42	Statement of Equivalent Rates for Federal Hires (May 1989) ( <i>see full text version in Section I</i> )	Fill-in information is underlined in full text
I.59	FAR 52.222-50	Combating Trafficking in Persons (Aug 2007)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.59A			None
I.60	FAR 52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997) – Alternate I (Jul 1995)	(b) Offeror fill-in
I.61	FAR 52.223-5	Pollution Prevention and Right-to-Know Information (Aug 2003)	None
I.62	FAR 52.223-10	Waste Reduction Program (Aug 2000)	None
I.63	FAR 52.223-11	Ozone-Depleting Substances (Mar 2001) ( <i>see full text version in Section I</i> )	(b) Offeror fill-in
I.64	FAR 52.223-12	Refrigeration Equipment and Air Conditioners (May 1995)	None
I.65	FAR 52.223-14	Toxic Chemical Release Reporting (Aug 2003)	None
I.65a	FAR 52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) Alt I (Dec 2007)	None
I.66	FAR 52.224-1	Privacy Act Notification (Apr 1984)	None
I.67	FAR 52.224-2	Privacy Act (Apr 1984)	None
I.68	FAR 52.225-1	Buy American Act – Supplies (Jun 2003)	None
I.69	FAR 52.225-11	Buy American Act – Construction Materials Under Trade Agreements (Aug 2007) ( <i>see full text version in Section I</i> )	(b) (3) None (d) Offeror fill-in
I.70	FAR 52.225-13	Restrictions on Certain Foreign Purchases (Feb 2006)	None
I.70A	FAR 52.225-23	Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials under Trade Agreements (Mar 2009)	Full Text
I.70B	FAR 52.225-24	Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials under Trade Agreements. (Mar 2009)	Full Text
I.71	FAR 52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)	None
I.72	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)	None
I.73	FAR 52.227-3	Patent Indemnity (Apr 1984)	None
I.74	FAR 52.227-9	Refunds of Royalties (Apr 1984)	None
I.75	DEAR 952.227-82	Rights to Proposal Data (Apr 1994)	Offeror fill-in
I.76	FAR 52.230-2	Cost Accounting Standards (Apr 1998)	None
I.77	FAR 52.230-6	Administration of Cost Accounting Standards (Apr 2005)	None
I.78	FAR 52.232-9	Limitation on Withholding of Payments (Apr 1984)	None
I.79	FAR 52.232-12	Advance Payments (May 2001) Alt II (May 2001) ( <i>see full text version in Section I</i> )	(a), (b), (c) (e), (p) (8), (13), (14). Fill-in information is underlined in full text
I.80	FAR 52.232-17	Interest (Jun 1996)	None
I.81	FAR 52.232-18	Availability of Funds (Apr 1984)	None
I.82	FAR 52.232-22	Limitation of Funds (Apr 1984)	None
I.83	FAR 52.232-24	Prohibition of Assignment of Claims (Jan 1986)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.84	FAR 52.232-25	Prompt Payment (Oct 2003) – Alternate I (Feb 2002)	None
I.85	FAR 52.232-33	Payment of Electronic Funds Transfer –Central Contractor Registration (Oct 2003)	None
I.86	FAR 52.233-1	Disputes (Jul 2002) – Alternate I (Dec 1991)	None
I.87	FAR 52.233-3	Protest After Award (Aug 1996) – Alternate I (Jun 1985)	None
I.88	FAR 52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)	None
I.89	FAR 52.234-4	Earned Value Management System (Jul 2006)	(g) AREVA Federal Services LLC
I.90	FAR 52.236-2	Differing Site Conditions (Apr 1984)	None
I.91	FAR 52.236-3	Site Investigation and Conditions Affecting the Work (Apr 1984)	None
I.92	FAR 52.236-5	Material and Workmanship (Apr 1984)	None
I.93	FAR 52.236-7	Permits and Responsibilities (Nov 1991)	None
I.94	FAR 52.236-18	Work Oversight in Cost Reimbursement Construction Contracts (Apr 1984)	None
I.95	FAR 52.236-19	Organization and Direction of the Work (Apr 1984)	None
I.96	FAR 52.237-2	Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)	None
I.97	FAR 52.237-3	Continuity of Services (Jan 1991)	None
I.98	FAR 52.239-1	Privacy or Security Safeguards (Aug 1996)	None
I.99	FAR 52.242-1	Notice of Intent to Disallow Costs (Apr 1984)	None
I.100	FAR 52.242-3	Penalties for Unallowable Costs (May 2001)	None
I.101	FAR 52.242-4	Certification of Final Indirect Costs (Jan 1997)	None
I.102	FAR 52.242-13	Bankruptcy (Jul 1995)	None
I.103	FAR 52.243-2	Changes – Cost Reimbursement (Aug 1987) – Alternate II (Apr 1984), Alternate III (Apr 1984), and Alternate IV (Apr 1984)	None
I.103A	FAR 52.243-6	Change Order Accounting (Apr 1984)	None
I.104	FAR 52.243-7	Notification of Changes (Apr 1984)	(b) 10 (d) 30
I.105	FAR 52.244-2	Subcontracts (Jun 2007) – Alternate I (Jun 2007)	(e) AREVA Federal Services LLC, (k) None
I.106	FAR 52.244-5	Competition in Subcontracting (Dec 1996)	None
I.107	FAR 52.244-6	Subcontracts for Commercial Items (Mar 2007)	None
I.108	FAR 52.245-1	Government Property (Jun 2007)	None
I.109	FAR 52.246-25	Limitation of Liability – Services (Feb 1997)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.110	FAR 52.247-1	Commercial Bill of Lading Notations (Feb 2006)	(a) Department of Energy (b) Department of Energy Contract No. DE-AC27-08RV14800, the Contract Administration Office specified in the Section G Clause entitled, <i>Contract Administration</i>
I.111	FAR 52.247-63	Preference for U.S.-Flag Air Carriers (Jun 2003)	None
I.112	FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)	None
I.113	FAR 52.247-67	Submission of Commercial Transportation Bills to the General Services Administration for Audit (Feb 2006) (see full text version in Section I)	(c) Fill-in information is underlined in full text
I.114	FAR 52.247-68	Report of Shipment (REPSHIP) (Feb 2006)	None
I.115	FAR 52.249-6	Termination (Cost Reimbursement) (May 2004)	None
I.116	FAR 52.249-14	Excusable Delays (Apr 1984)	None
I.117	FAR 52.251-1	Government Supply Sources (Apr 1984) Alternate I (Apr 1984)	None
I.118	FAR 52.251-2	Interagency Fleet Management System Vehicles and Related Services (Jan 1991)	None
I.119	FAR 52.252-6	Authorized Deviations in Clauses (Apr 1984) (see full text version in Section I)	(b) Fill-in information is underlined in full text
I.120	FAR 52.253-1	Computer Generated Forms (Jan 1991)	None
I.121	DEAR 952.203-70	Whistleblower Protection for Contractor Employees (Dec 2000)	None
I.122	DEAR 952.204-2	Security Requirements (May 2002)	None
I.123	DEAR 952.204-70	Classification/Declassification (Sep 1997)	None
I.124	DEAR 952.204-75	Public Affairs (Dec 2000)	None
I.125	DEAR 952.208-7	Tagging of Leased Vehicles (Apr 1984)	None
I.126	DEAR 952.208-70	Printing (Apr 1984)	None
I.127	DEAR 952.209-72	Organizational Conflicts of Interest Alternate I (Jun 1997)	None
I.128	DEAR 952.215-70	Key Personnel (Dec 2000)	None
I.129	FAR 52.216-7/ DEAR 952.216-7	Allowable Cost and Payment (Dec 2002); Alternate II	(a) (3) 30 <sup>th</sup>
I.130	DEAR 952.217-70	Acquisition of Real Property (Apr 1984)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.131	DEAR 952.223-75	Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)	None
I.132	DEAR 952.224-70	Paperwork Reduction Act (Apr 1994)	None
I.133	DEAR 952.226-74	Displaced Employee Hiring Preference (Jun 1997)	None
I.134	DEAR 952.231-71	Insurance -- Litigation and Claims (Apr 2002)	None
I.135	DEAR 952.242-70	Technical Direction (Dec 2000)	None
I.136	DEAR 952.247-70	Foreign Travel (Dec 2000)	None
I.137	DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (Jun 1996)	None
I.138	DEAR 952.251-70	Contractor Employee Travel Discounts (Dec 2000)	None
I.139	DEAR 970.5203-1	Management Controls (Jun 2007)	None
I.140	DEAR 970.5204-2	Laws, Regulations, and DOE Directives (Dec 2000)	None
I.141	DEAR 970.5204-3	Access to and Ownership of Records (Jul 2005)	(b)(1) through (b)(5) are Contractor-owned records.
I.142	DEAR 970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution (Dec 2000)	None
I.143	DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites (Dec 2000)	None
I.144	DEAR 970.5223-5	DOE Motor Vehicle Fleet Fuel Efficiency (Oct 2003)	None
I.145	DEAR 970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)	None
I.146	DEAR 970.5226-3	Community Commitment (Dec 2000)	None
I.147	DEAR 970.5227-1	Rights in Data -- Facilities (Dec 2000)	None
I.148	DEAR 970.5227-4	Authorization and Consent (Aug 2002)	None
I.149	DEAR 970.5227-6	Patent Indemnity-Subcontracts (Dec 2000)	None
I.150	DEAR 970.5227-9	Notice of Right to Request Patent Waiver (Dec 2000)	None
I.151	DEAR 970.5227-10	Patent Rights -- Management and Operating Contracts, Non-Profit Organization or Small Business Firm Contractor (Aug 2002)	None
I.152	DEAR 970.5227-11	Patent Rights -- Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (Dec 2000)	None
I.153	DEAR 970.5229-1	State and Local Taxes (Dec 2000)	None
I.154	DEAR 970.5231-4	Preexisting Conditions (Dec 2000) Alternate II (Dec 2000)	October 1, 2008; October 1, 2008
I.155	DEAR 970.5232-3	Accounts, Records, and Inspection (Jun 2007), Alternate I (Dec 2000)	None
I.156	DEAR 970.5232-5	Liability with Respect to Cost Accounting Standards (Dec 2000)	None

### **I.12A FAR 52.204-11, AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS (JUL 2010)**

(a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors). These FAQs are also linked under <http://www.FederalReporting.gov>.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

(d) The Contractor shall report the following information, using the online reporting tool available at [http:// www.FederalReporting.gov](http://www.FederalReporting.gov).

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader

labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

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

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

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

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(10)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

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

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

(End of clause)

### **I.23 FAR 52.215-19, NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

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

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

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

(b) The Contractor shall—

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

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

- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(k).

**I.24A FAR 52.216-24, LIMITATION OF GOVERNMENT LIABILITY (APR 1984)**

*(Expenditures as they apply to funds provided through the American Recovery and Reinvestment Act (ARRA) only)*

- (a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$323,855,000.00 dollars.
- (b) The maximum amount for which the Government shall be liable if this contract is terminated is \$323,855,000.00 dollars.

**I.56 FAR 52.222-39, NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

- (a) *Definition.* As used in this clause—"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

- (c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.
- (d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.
- (e) The requirement to post the employee notice in paragraph (b) does not apply to—
  - (1) Contractors and subcontractors that employ fewer than 15 persons;
  - (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
  - (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
  - (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—

- (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
  - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
- (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.
- (f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—
  - (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
  - (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
  - (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.
- (g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**I.58 FAR 52.222-42, STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES  
(MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable



to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: *It is not a Wage Determination*

Employee Class	Monetary Wage—Fringe Benefits
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Equivalent Federal Hire Classifications, Wages, and Benefit programs are described on the Office of Personnel Management web site at [www.opm.gov](http://www.opm.gov).

**I.63 FAR 52.223-11, OZONE-DEPLETING SUBSTANCES (MAR 2001)**

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

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

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

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

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

**I.69 FAR 52.225-11, BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (NOV 2006)**

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

"Caribbean Basin country construction material" means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

None

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

- (E) Time of delivery or availability;
  - (F) Location of the construction project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars) <sup>1</sup>
Item 1:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....
Item 2:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....

.....  
.....  
.....  
.....  
<sup>1</sup> Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

**I.70A FAR 52.225-23, REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS--BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)**

(a) Definitions. As used in this clause—

*“Construction material”* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*“Domestic construction material”* means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

*“Foreign construction material”* means a construction material other than a domestic construction material.

*“Free trade agreement (FTA) country construction material”* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

*“Least developed country construction material”* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*"Manufactured construction material"* means any construction material that is not unmanufactured construction material.

*"Recovery Act designated country"* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

*"Recovery Act designated country construction material"* means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

*"Steel"* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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

*"Unmanufactured construction material"* means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*"WTO GPA country construction material"* means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a-10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

-----  
*NONE*

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate

consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars)
Item 1:			*
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

(End of clause)

**I.70B FAR 52.225-24, NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS--BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS. (MAR 2009)**

(a) Definitions. "Construction material," "domestic construction material," "foreign construction material," "manufactured construction material," "Recovery Act designated country construction material," "steel," and "unmanufactured construction material," as used in this provision, are defined in the clause of this solicitation entitled "Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-23).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall

include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23 in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

**I.79 FAR 52.232-12, ADVANCE PAYMENTS (MAY 2001) ALT II (MAY 2001)**

- (a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, identified in the Section G Clause entitled Contract Administration, or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed the amount specified in the Section B Clause entitled Obligation and Availability of Funds. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.
- (b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special account with the institution identified in the Section J Attachment entitled, Special Financial Institution Account Agreement. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.
- (c) *Use of funds.* The Contractor shall withdraw funds from the special account only to pay for allowable costs as prescribed by the Section I Clause entitled, Allowable Cost and Payment of this contract. Payment for any other types of expenses shall be approved in writing by the administering office.
- (d) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments may be withdrawn from the special account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.
- (e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost as identified in Section B Clause entitled Contract Cost and Contract Fee (not including fixed-fee, if any) for the work under this contract, the Government shall withhold further payments to the Contractor. Upon completion or termination of the contract, the Government

shall deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed 10% of the total amount identified in Section B Clause entitled Contract Cost and Contract Fee. The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Contracting Officer) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.*

- (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in paragraph (f)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following shall be observed:
  - (i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check.
  - (ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.
  - (iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer's certification of the applicable dates.
- (2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.
- (3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41

(50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

- (4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.
- (g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.
- (h) *Lien on special bank account.* The Government shall have a lien upon any balance in the special account paramount to all other liens. The Government lien shall secure the repayment of any advance payments made under this contract and any related interest charges.
- (i) *Lien on property under contract.*
  - (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.
  - (2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.
  - (3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

- (4) If, under the termination clause, the Contracting Officer authorizes the Contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—
  - (i) The termination inventory is sold or retained; and
  - (ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.
  
- (j) Insurance.
  - (1) The Contractor shall maintain with responsible insurance carriers—
    - (i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;
    - (ii) Adequate insurance against liability on account of damage to persons or property; and
    - (iii) Adequate insurance under all applicable workers' compensation laws.
  
  - (2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—
    - (i) Maintain this insurance;
    - (ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and
    - (iii) Furnish any evidence with respect to its insurance that the administering office may require.
  
- (k) Default.
  - (1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further withdrawals from the special account and further payments on this contract:
    - (i) Termination of this contract for a fault of the Contractor.
    - (ii) A finding by the administering office that the Contractor has failed to—
      - (A) Observe any of the conditions of the advance payment terms;
      - (B) Comply with any material term of this contract;

- (C) Make progress or maintain a financial condition adequate for performance of this contract;
  - (D) Limit inventory allocated to this contract to reasonable requirements; or
  - (E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.
- (iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.
  - (iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special account.
  - (v) The commission of an act of bankruptcy.
- (2) If any of the events described in paragraph (k)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:
- (i) Withdraw by checks payable to the Treasurer of the United States, signed only by the countersigning agency, all or any part of the balance in the special account and apply the amounts to reduce outstanding advance payments and any other claims of the Government against the Contractor.
  - (ii) Charge interest, in the manner prescribed in paragraph (f) of this clause, on outstanding advance payments during the period of any event described in paragraph (k)(1) of this clause.
  - (iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.
  - (iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.
- (3) The Government may take any of the actions described in paragraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.
- (l) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

- (m) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.
- (n) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.
- (o) *Representations.* The Contractor represents the following:
- (1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.
  - (2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.
  - (3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.
  - (4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.
  - (5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.
  - (6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.
  - (7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.
  - (8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

- (p) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—
- (1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;
  - (2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;
  - (3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;
  - (4) Sell, convey, or lease all or a substantial part of its assets;
  - (5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;
  - (6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;
  - (7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;
  - (8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over the limitations established by FAR 31.205-6 and DEAR 970.3102-05-6 a year;
  - (9) Change substantially the management, ownership, or control of the corporation;
  - (10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;
  - (11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

- (12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;
- (13) Make or covenant for capital expenditures exceeding \$0 in total;
- (14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than \$0; or
- (15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

**I.113 FAR 52.247-67, SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
  - (1) By the Contractor under a cost-reimbursement contract; and
  - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to—

General Services Administration  
Attn: FWA  
1800 F Street NW  
Washington, DC 20405

**I.119 FAR 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 Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.