

PART I – THE SCHEDULE
SECTION B
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B.1 DESIGNATION OF WORK AND FACILITIES

The Contractor shall be responsible for planning, managing, and executing the Tank Waste Remediation System (TWRS), projects, operations, and other activities as described in Section C, Statement of Work, of this contract.

B.2 970.5204-15 OBLIGATION OF FUNDS (Apr 1994) (DEVIATION)

(a) Obligation of funds. The amount obligated by the Government with respect to this contract is \$15,568,350.33 as of September 30, 1999. Such amount may be increased unilaterally by DOE Contracting Officer written notice to the Contractor and may be increased or decreased by modification to the contract. Estimated collections from others for work and services to be performed under this contract are not included in the funds currently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the DOE Contracting Officer. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans, such as the Modification of Contract Obligation Notice and Distribution of Obligation Report (for individual orders of work for other DOE offices and non-DOE funded work only) established by DOE and furnished to the contractor from time to time under this contract unless written direction is provided by DOE Contracting Officer.

(b) Limitation on payment by the Government. Payment of allowable costs by the Government under this contract cannot exceed the funds currently obligated at (1) each budget and reporting (BNR) control, and (2) specific limitations identified in the Modification of Contract Obligation Notice and/or Distribution of Obligation Report (for individual orders of work for other DOE offices and non-DOE funded work only), referred to as the financial control point, less the Contractor's fee. Actual costs and/or encumbrances that exceed the current obligation limit at the financial control point shall be retained within the Contractor's financial system. Financial control points that have been exceeded will be worked to resolution by the Contractor and DOE. Costs drawn on the letter of credit which exceed the current obligation limit at the financial control point and cannot be resolved by fiscal year-end will be reimbursed from corporate funds. If resolution cannot be reached, including but not limited to, authorization received, additional funding received, Contractor accounting errors corrected, then such actual costs and/or encumbrances will be borne by the Contractor including interest in accordance with contract clause, Interest. Interest will accumulate beginning when the Contractor records the cost.

(c) Notices. Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) above), plus the Contractor's best estimate of collections to be received during the 30 day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed

rate for only 30 days and to cover the Contractor's unpaid fee, and outstanding commitments and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of funds (including revenues and receipts available under paragraph (a) above), less the amount of the Contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) above), less the amount of the Contractor's fee earned but not paid, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government).

(d) Financial plans; cost and commitment limitations. In addition to the limitations provided for elsewhere in the contract, DOE may, through contract modifications to this section, financial plans (such as the Modification of Contract Obligation Notice and Distribution of Obligation Report [for individual orders of work for other DOE offices and non-DOE funded work only]), and other directives issued to the Contractor, establish specific limitations on the costs and encumbrances at the financial control point. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor hereby agrees (1) to comply with financial control point limitations set forth in such plans and directives, (2) to comply with other requirements of such plans and directives, and (3) to promptly notify DOE in writing, when it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun at the financial control point. Encumbrances are defined as the uncosted balances under contracts issued and other liabilities incurred by the Contractor, including but not limited to: (1). purchase orders issued; (2). contracts and subcontracts awarded including the full liability under lease purchases and capital leases; (3). termination cost for incrementally funded firm fixed price contracts, operating lease agreements, and multi-year service contracts that contain termination clauses; (4). other agreements for the acquisition of goods and services related to other M&O and Management and Integration (M&I) contractors' liabilities; and (5). work orders or authorizations issued to M&O and M&I construction contractors. This definition may be revised and provided to the Contractor from time to time by DOE.

B.3 ESTIMATED COST AND FEE

(a) The estimated cost and total available fee pool will be established annually by the Government and set forth in a modification to Table B-1. The estimated cost in Table B-1 excludes costs of work related to Bechtel Hanford, Inc. (BHI), Hanford Environmental Health Foundation (HEHF), privatization of treatment of Tank Waste Remediation System (TWRS) work and Pacific Northwest National Laboratory [non-

Environmental Management (EM)] work, but includes the estimated cost associated with the Fluor Daniel Hanford, Inc. (FDH) prime contract with DOE starting in FY2000. The estimated cost, including total available fee for this contract together with the FDH contract is as follows:

Table B-1
 Estimated Costs (in millions)⁽¹⁾⁽²⁾

<u>CATEGORY</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001⁽³⁾</u>
EM Non-Construction	776.3	735.5	728.7	695.7	634.5
EM Construction	<u>151.4</u>	<u>61.0</u>	<u>51.8</u>	<u>158.0</u>	<u>196.0</u>
Total EM	927.7	796.5	780.5	853.7	830.5
Other Non-Const.	98.8	65.0	40.1	106.0	106.0
Other Construct.	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Total Other	98.8	65.0	40.1	106.0	106.0
Total Site Funding	<u>1026.5</u>	<u>862.5</u>	<u>820.6</u>	<u>959.7</u>	<u>936.5</u>
Total Avail. Fee Pool	<u>54.0</u>	<u>44.6</u>	<u>42.3</u>	<u>49.5</u>	<u>48.3</u>

(b) In no event will the total fees/incentives for the Contractor, when added to the total fee/incentives for the FDH prime contract with DOE, exceed the above Total Available Fee Pool for each fiscal year.

(c) Effective starting in FY 2000, the estimated cost and total available fee for this contract only will be established annually by the Government and set forth in a modification to this subsection. The total estimated cost (includes total available fee pool) and fee are as follows:

Table B-2			
FY 2000			
<u>Estimated LMHC Cost</u>	<u>Available Fee Pool</u>	<u>Superstretch Fee</u>	<u>Total Fee</u>
\$318M	\$14.4M	\$5.0M	\$19.4M

(1) The Government reserves the right to unilaterally increase or decrease the estimated cost in accordance with appropriated funds and Subsection B.4 below.

(2) Estimated cost numbers include fee.

(3) The cost for each of the option years from October 1, 2001, through September 30, 2006, is estimated to be the same as those estimated costs set forth for FY 2001.

B.4 AVAILABILITY OF FUNDS

The duties and obligations of the Government calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for authorized purposes. Any work performed beyond the funds obligated and/or performed without the written consent of the Contracting Officer shall be at the Contractor's own risk.

**PART I - THE SCHEDULE
SECTION C
STATEMENT OF WORK**

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C.1 SUMMARY DESCRIPTION OF WORK

The Hanford site has two major missions: (1) cleanup, and (2) science and technology. There are two major Office of Environmental Management (EM) programs associated with cleanup. The first is Tank Waste Remediation System (TWRS), which entails cleanup of Hanford site high-level waste (HLW), and is managed by the DOE Office of River Protection (ORP). The second is Project Hanford, which entails cleanup of the remainder of the Hanford site, and is managed by the DOE Richland Operations Office (RL).

Lockheed Martin Hanford Corporation (“Contractor”) shall be responsible for planning, managing, and executing the Tank Waste Remediation System (TWRS), projects, operations, and other activities as described in the Contract. The Contractor shall be responsible for interfacing and coordinating with other Hanford site prime contractors in the performance of its work. Where other Hanford site prime contractors use infrastructure and services furnished by the Government through the Contractor, the Contractor shall integrate their requirements into overall Hanford site requirements.

The Contractor shall conduct business at the Hanford site in such a way as to be consistent with the following outcomes, which flow from the Hanford Strategic Plan.

- Maintain Tank Farms in a safe and stable configuration.
- Retrieve tank wastes to the extent needed for tank closure and deliver to the Privatization Contractor for treatment and immobilization.
- The immobilized low-activity fraction will be disposed onsite in a 200 Area disposal system.
- The high-level immobilized fraction will be interim stored until it can be shipped offsite for disposal (planned for the Yucca Mountain geologic repository).
- Incorporate the Cesium/Strontium capsules declared as waste into the HLW process for repository disposal.
- Retrieve Hanford Tank Waste and permanently close all Hanford Tank Farms.

Success in achieving these outcomes shall consider the following factors:

- Protection of worker safety and health, and public safety and health, and the environment
- Leadership & management effectiveness (Operations Management)
- Management responsiveness to customers (Customer Service)
- Responsive communications with external and internal Hanford customers
- Proficient partnering with other Hanford site prime contractors.

Specific performance objectives, measures, and expectations are detailed in Section J, Appendix D.

The Contractor shall integrate safety and environmental awareness into all activities, including those of subcontractors at all levels. Work must be accomplished in a manner that achieves high levels of quality, protects the environment, the safety and health of workers and the public, and

complies with requirements. The Contractor shall identify hazards, manage risks, identify and implement good management practices, and make continued improvements in environment, safety, health, and quality (ESH&Q) performance.

The Contractor shall seek ways to streamline work processes by the use of necessary and sufficient standards and requirements.

The Contractor shall furnish, or cause to be furnished, all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government), and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and effective manner all necessary work set forth in this Contract.

C.2 MANAGEMENT WORKSCOPE

A. Project Planning

The Contractor shall:

(1) Perform planning based on the requirements, interfaces, endpoint targets and performance objectives provided in DOE guidance. This planning activity shall utilize systems engineering techniques that assures the Contractor's workscope is integrated. The Contractor shall support required revisions of the Hanford Strategic Plan and will participate with other DOE prime contractors, regulators, stakeholders, and customers, in strategic situation analysis, integrated baseline development discussions and issue definition, and resolution. This planning shall look beyond the period of this contract to the life-cycle of TWRS projects.

(2) Complete and maintain an integrated life-cycle baseline which reflects: (a) the technical scope of work specified in this Contract, (b) project/program schedules with critical paths identified, and (c) a validated cost profile based on a resource-loaded schedule. The Contractor shall use industry-proven methodology, which will interface with DOE specific management information systems, in the preparation of this technical, schedule and cost baseline. The baseline shall be the basis for budget development, input to risk analysis, and prioritization of work. The baseline shall be developed and implemented in the Contractor's management system and shall be linked to the Privatization Contractor baselines to provide an integrated project baseline. Specifically, the Contractor shall:

(a) Organize the technical scope of work to be planned, managed, integrated, and reported using conventional project management techniques. The contractor shall develop and use a Work Breakdown Structure (WBS) which will map to the ORP WBS.

(b) Implement a systems engineering process which supports the management and integration of workscope activities. The Contractor shall describe its approach to systems engineering in a Systems Engineering Management Plan as required in Section J, Appendix E. The contractors' selected approach to systems engineering should be based on best industry practices and should utilize a graded approach, as necessary.

(c) Develop and implement a risk management process which supports the management and integration activities under the authority of the Contract. The Contractor shall describe the approach to risk management specifically in the Risk Management Plan as required in Section J Appendix E.

(d) Use a "graded approach" to determine applicable sets of requirements for use in design, management and operation of the individual facilities, and execution of projects and programs, with due consideration for industry standards, elimination of redundant requirements, value added, and the level of risk associated with each facility or program.

(e) Incorporate the requirements of the National Environmental Policy Act (NEPA) into the planning process for activities covered in this Contract.

(f) Provide support to ORP planning and integration activities. Conduct studies and analyses of TWRS/Hanford systems and information, which supports ORP's internal and external management needs. The Contractor shall provide support in 1) corporate strategic planning, 2) policy development, 3) management information systems, and 4) baseline management and reporting. Studies and analyses include identification and development in conjunction with DOE of breakthroughs that significantly improve baseline performance and lifecycle costs or improve work processes.

(3) Translate specific fiscal year guidance from the Contracting Officer into direction for updating project baselines. ORP must approve the baselines and the supporting documentation before the Contracting Officer authorizes the commencement of work.

B. Management System

The Contractor is responsible to have systems, which are managerially and financially in control for its own and other Hanford site work as required by DOE. In furtherance of this the Contractor shall:

(1) Establish and maintain management systems to ensure that the Contract work is managed in a business-like manner to promote integration, enhance customer and stakeholder confidence, provide accurate and timely information for proactive decision-making, and ensure worker and public safety and protection of the environment. Systems

and methodologies shall be established to identify, evaluate, and manage risks, and establish priorities based on project life-cycle considerations.

(2) Obtain, integrate, analyze, report, and maintain appropriate and accurate TWRS information to support DOE in the integration and management of the Hanford site. This information includes, but is not limited to, data critical to effective management of the Hanford site such as movement of wastes on or off the site, compliance with regulatory action assignments, or utilization of site services.

(3) Develop and maintain a management system which reflects appropriate and accurate information to control, evaluate, and integrate project/mission management. This system shall reflect the following.

(a) Management, control, and reporting of technical, schedule, cost, and financial elements of the TWRS life-cycle baseline and the supporting project execution plans, as required by the Earned Value Management System clause of this contract, including:

(i) Appropriate change control processes which ensure documentation of all monitored elements of the baseline is maintained up-to-date. This includes the configuration baseline of all technical systems and structures, and includes revision to the baseline and critical path as appropriate upon approval of changes.

(ii) Tracking and measuring tools to provide ORP continual assessment of Contractor performance against the baseline;

(iii) Tools which allow the evaluation of the consequences (technical, cost, and schedule) of new information, alternative activities, and/or new financial scenarios;

(iv) Estimating procedures based on proven commercial techniques, such as activity-based cost estimating and benchmarking against industry standards, providing ORP with cost estimates, which can be independently validated;

(v) Cost accounting practices used for accumulating and reporting costs shall be consistent with those used in estimating costs for work under the contract, and as such, amenable to the same validation as above;

(b) Provide ORP with appropriate integrated financial, schedule, and critical path analysis, and activity tracking data to effectively manage their baseline(s) through automated reporting emphasizing performance measurements, change control, and trending data. This system shall support DOE's ability to both control and report direct and indirect costs in a manner satisfactory to DOE.

- (c) Maintain flexible information systems compatible with DOE information systems, including reporting, budget, and financial systems, and allow efficient data interchange among site contractors and DOE. This includes compatibility with DOE Integrated Planning, Accountability, and Budgeting System-Information System.
 - (d) Create the ability to accommodate electronic transfer of data between a diverse set of hardware, software, and communications platforms. Use standard data definitions, time schedules, and rules for the provision of information to the MIS to ensure accuracy and consistency. All data and information provided to DOE relating to the Contractor or the subcontractors shall be prepared using common and consistent definitions, principles, and methodologies (e.g., Full-Time Equivalent [FTE] employees).
 - (e) Use a centralized system of reporting unusual occurrences, near misses, etc., and ensure that lessons to be learned from such occurrences are provided to DOE, the Contractor, and subcontractor workforces.
 - (f) Maintain comprehensive management and technical oversight and corrective action programs, including tracking of issues thus developed and lessons-learned program effectiveness.
- (4) Establish a TWRS configuration management system based on industry consensus standards, which with other management tools, such as change control, assures a sound technical basis for the TWRS life-cycle baselines.
- (5) Provide to DOE via a computerized file, periodic accounting entries regarding government property acquisitions, dispositions, and monthly depreciation charges. These entries shall provide consistent information and allow reconciliation of the Contractor's detailed property records.
- (6) Participate in the Integrated Process and Product Development (IPPD) approach used to manage interfaces between the Contractor and the Privatization Contractor, and provide required support to the Integrated Product/Process Teams (IPTs).
- (7) Participate in the development on interfaces between the Contractor and Privatization Contractor to: 1) establish the physical and administrative interfaces, 2) develop any acceptance criteria at the point of transition, and 3) provide the necessary Contractor contributions to all Interface Control Documents that control each interface.

C. Manage and Integrate Resources

The Contractor shall manage and integrate its resources for optimal achievement of outcomes set forth in C.1 above. In furtherance of this, the Contractor shall:

- (1) Support the annual budget submission process by working with DOE and other prime contractors to develop budget formulation documentation. The Contractor shall prepare documentation for its own work activities. Support to DOE during this process shall include but is not limited to assisting DOE to:
 - (a) Develop project budget data.
 - (b) Prepare budget justification analyses and budget scenario studies.
 - (c) Provide support to all crosscutting budget formulation documents, i.e. ESH&Q, Information Resources Management, etc.
 - (d) Obtain regulator and other stakeholder participation in budget development, including assistance in response to stakeholder and regulator inquiries.
- (2) Provide leadership, project, and personnel management skills necessary to ensure compliance with the TWRS goals and the Tri-Party Agreement (TPA), and to motivate the workforce to:
 - (a) Achieve quality work performance;
 - (b) Mandate attention to worker and public safety and health, environmental protection, and the tenets of Conduct of Operations; and,
 - (c) Be fiscally and ethically responsible in the management of government and public resources, including property, equipment, funds, and time.
- (3) Use the existing "People Core" system at the Hanford site to enhance human resources functions sitewide.
- (4) Continually "right-size" its own workforce and that of its subcontractors to have the size of workforce equal to that necessary to accomplish the authorized workscope.
- (5) Resolve employee concerns at the appropriate level, as required by applicable laws and DOE directives. The Contractor shall support and provide cooperative membership in the Hanford Joint Council (HJC) for resolving employee concerns, using it as a forum for resolution of contractor personnel concerns. However, the Contractor shall review and make recommendation to ORP to make the Charter and processes of the HJC consistent with this contract. The annual budget for the effort will be determined by DOE. The continued need for the HJC shall be reviewed annually and recommendations submitted to DOE for decision.

(6) Continually promote diversity in all aspects of the work under this contract. A Diversity Plan, as set forth in Section J, Appendix G, shall be submitted to ORP for review and approval by February 1, 2000, and will be updated annually thereafter.

(7) Provide an independent internal audit capability to review its activities and those of its subcontractors. An Internal Audit Plan as set forth in Section J, Appendix E shall be submitted to ORP for approval by December 1, 1999, and updated annually thereafter.

D. Environment, Safety, Health and Quality (ESH&Q)

The safety and health of workers and the public, protection and restoration of the environment, and implementation of quality assurance programs are fundamental responsibilities of the Contractor. Accordingly, the Contractor shall:

(1) Take necessary actions to minimize serious injuries/illnesses and /or fatalities and prevent radiological or chemical exposures to workers and environmental releases in excess of established limits;

(2) Establish clear environmental, safety, health and quality plans and priorities and manage activities in proactive ways, including visible management field presence, that effectively and efficiently protect the environment, public and worker safety and health, and ensure the quality of work and work products;

(3) Carry out all activities in a manner that complies with human health, safety, environmental, and quality regulations; minimizes the generation of wastes, releases or emissions into the atmosphere, and releases to soil and surface or groundwater; and complies with applicable regulatory requirements and DOE directives;

(4) Empower workers through the use of committees, employee involvement and the tenants of DOE's Voluntary Protection Program (VPP);

(5) Engender a "Safety Conscious Work Environment" in which safety issues are promptly identified and effectively resolved, and in which employees feel free of recrimination, harassment, intimidation, or other actions that induce peer pressure to not raise safety issues or otherwise create an environment where safety issues are not identified and resolved.

The Contractor shall establish an Integrated Safety Management System (ISMS), in compliance with the clauses entitled, "Integration of Environment, Safety and Health into Work Planning and Execution", and "Conditional Payment of Fee, Profit or Incentives" that clearly communicates the roles, responsibilities, and authorities of line managers; holds line managers accountable for the performance of work in a manner ensuring protection of workers, the public, and the environment; and ensures quality work and products.

The Contractor shall:

- (1) Establish effective management systems to identify deficiencies and resolve them in a timely manner; ensure that corrective actions are implemented that address the extent of conditions, root causes, and measures to prevent recurrence; and prioritize and track commitments and actions as well as identify and implement lessons learned from other DOE sites, contractors, or commercial activities.
- (2) Establish a structured, standards-based approach to planning and control of work including identification, management and implementation of ESH&Q standards and requirements that are appropriate for the work to be performed and for controlling related hazards, while facilitating the effective and efficient delivery of work. The Contractor shall implement the requirements identified in the clause entitled, "Laws, Regulations and DOE Directives."
- (3) Establish an organization that supports effective ESH&Q management by ensuring appropriate levels of staffing and competence.
- (4) Establish disciplined self-assessment, feedback, continuous improvement processes, and conduct of operations discipline in the performance of all work.
- (5) Implement a program to track and address environmental compliance issues and implement requirements (including but not limited to permitting, environmental reporting, Consent Decrees, Tri-Party Agreement reporting/management, NEPA, pollution prevention, waste minimization), and comply with all aspects of the clause entitled "Environmental Responsibility."
- (6) Recommend and implement ESH&Q performance measures to monitor the effectiveness of the implementation of ESH&Q programs.
- (7) Occupational Health Services are currently provided to the Hanford site by the Hanford Environmental Health Foundations (HEHF). The Contractor shall obtain for itself and require all subcontractors performing work on the Hanford site to obtain the following services from HEHF: occupational medical evaluations including return to work evaluations and work restriction reviews, medical surveillance evaluations, occupational primary care, health care centers/first aid, work conditioning, case management, work site health programs including blood-borne pathogens and immunizations, and behavioral health services including employee assistance programs, and health information services such as medical records and medical scheduling. The Contractor shall coordinate with HEHF and reach agreement regarding service requirements and delivery, including data gathering and sharing. The agreement should emphasize a comprehensive public health approach as being integral to a well run health and safety program and address cost and resources effectiveness. This agreement shall be subject to approval and validation by ORP.

(8) Maintain, implement and improve the TWRS Nuclear Safety Authorization Basis in support of safe, effective, and efficient work accomplishment.

(9) In accordance with the ISMS, Authorization Agreements (AAs) will be developed, mutually agreed to, and executed between the contractor and ORP. The AAs will be maintained by the contractor. The AAs are to serve as a mechanism whereby ORP, and the contractor, jointly clarifies and agrees to the key conditions for conducting work safely, effectively and efficiently for high hazard facilities.

E. Economic Transition and Outsourcing

The Contractor shall:

(1) Be responsible for the performance of the work under this contract in a manner that helps the community establish a stable economic base over the long term. This shall be accomplished through appropriate private sector participation in cleanup, making available for effective private use DOE assets no longer required or under-utilized by the Government, and investment of private resources in the community.

(2) The Contractor shall:

(a) Recommend to ORP the use (by the Contractor, subcontractors, or other private entities) of Government-owned assets (equipment, facilities, or land) on a non-interfering basis to promote, assist, or otherwise foster creation of new private sector jobs.

(b) Accomplish changes in the workforce in a way that minimizes social and economic impacts and complies with Section 3161 of P.L. 102-484.

F. Technology Management

The Contractor shall implement the DOE-established technology management process to identify TWRS project-specific technology needs and effective, acceptable solutions. The Contractor shall work with the Pacific Northwest National Laboratory (PNNL) to identify the areas of highest technical risk and uncertainty, align technology investments with the areas of highest risk, seek and apply innovative technical solutions, and provide linkages with the national science and technology programs. Specific technology tasks shall include:

(1) Coordinate and conduct science and technology assessments to identify and quantify the areas of high technical risk/uncertainty.

- (2) Develop near and long term mitigation plans (e.g. technology roadmaps, technology plans, technology insertion points, etc.) and link these plans with project baselines.
- (3) Seek innovative technical solutions and make appropriate investments to buy-down areas of highest risk consistent with mitigation plans.
- (4) Communicate and cooperate with appropriate Hanford site and National Technology Development teams and build partnerships with the science and technology community.

C.3 TANK WASTE REMEDIATION SYSTEM (TWRS) PROJECT

The TWRS scope includes the activities needed to (1) resolve safety issues and provide an approved authorization basis for operations; (2) operate, maintain, and upgrade the tank farms and supporting infrastructure; (3) construct, operate, and maintain facilities that are necessary for waste storage, retrieval, treatment, immobilization, and storage or disposal; (4) characterize, retrieve, treat, and immobilize the waste for disposal; (5) provide for the disposition of the cesium and strontium capsule contents; (6) provide disposal of immobilized low-activity waste (ILAW) on-site; (7) provide interim storage of immobilized high-level waste (IHLW) until it is shipped to the national geologic repository; and (8) provide for the closure and decontamination and decommissioning (D&D) of TWRS facilities and post-closure monitoring.

A. Tank Waste Characterization

The Tank Waste Characterization Project was established to characterize the Hanford site high-level radioactive waste to aid the safe storage, retrieval, processing, and disposal of this waste. This waste is stored in large, underground, radioactive waste storage double-shell tanks (DSTs) and single-shell tanks (SSTs). The work involved is to plan, sample, analyze, and report tank waste contents. Activities include; program management, characterization data development, sampling equipment, acquire samples and measurements, and sample analyses.

B. Tank Safety Issue Resolution

The purpose of this project is to provide an adequate, comprehensive, and reliable safety basis for the management and storage of waste by Tank Waste Remediation System (TWRS). This will be accomplished by developing and maintaining an integrated Authorization Basis (AB) and by resolving outstanding safety issues to ensure safe storage of waste. The FSAR shall be modified as appropriate to provide any Authorization Basis required for safe and reliable waste retrieval, feed delivery, and immobilized product storage.

The Tank Safety Issue Resolution Project was established to address hazards associated with the storage of radioactive mixed waste in large underground storage tanks at the Hanford site. Safety issues have been raised for single-shell tanks (SSTs), double-shell tanks (DSTs) and ancillary facilities with regard to flammable gas and organic complexants. In response to Public Law 101-510, Section 3137, "Safety Measures for Waste Tanks at Hanford Nuclear Reservation", tanks of the highest concern have been placed on the Watch List. This project develops the technical basis for closure of Unresolved Safety Questions (USQ), resolution of the safety issues, and removal of all tanks from the Watch List. It also supports upgrades to the Final Safety Analysis Report (FSAR).

C. Tank Farms Operations

Tank Farms Operations operates and maintains the TWRS mission required tank farm systems, structures, and components (SSCs) in a safe, reliable, and operable condition to meet mission requirements. The technical approach to Tank Farms Operations is to conduct all activities pertaining to the operation of a permitted treatment, storage, and disposal (TSD) facility within the boundary of the current Authorization Basis and in a manner that ensures compliance with all applicable federal, state, and local laws and regulations. This includes all operations support functions required for routine surveillance, operation, and maintenance of the 200 East Area and 200 West Area tank farms. Tank Farms Operations is also responsible for surveillance and maintenance of inactive miscellaneous facilities identified as part of the Tank Farms in the Authorization Basis and property records.

In addition the Tank Farms Operations has the mandate to pump interstitial liquids from the aging, single shell tanks in the 200 Area Tank Farms and transfer it to the safer, compliant double shell tanks in accordance with the Consent Decree, Tri-Party Agreement milestones and other schedules as set by the Department of Energy (DOE).

D. Retrieval

The mission of the Retrieval Project is, in an environmentally sound, safe, secure, and cost-effective manner, to:

1. Retrieve wastes from single-shell tanks, double-shell tanks, and designated miscellaneous underground storage tanks;
2. Provide waste to privatization contractors for processing; and
3. Close those tanks in accordance with regulatory requirements.

The Retrieval Project will establish the functions and requirements and install the equipment needed to reliably deliver the proper waste feed on schedule to the private immobilization contractor for Phase I Privatization.

The Tank Waste Remediation System (TWRS) Environmental Impact Statement Record of Decision calls for retrieval of wastes from all 149 single-shell tanks (SSTs), 28 double-shell tanks (DSTs), and miscellaneous underground storage tanks (MUSTs). Until all waste is retrieved, the DSTs must function to store and prepare waste retrieved from SSTs and MUSTs for waste treatment facilities.

E. Process Waste Support

The mission of Process Waste Support is to assist the ORP in the management of Privatization Phase I and Privatization Phase II. This includes the integration of privatized and non-privatized activities; assisting in the execution of the privatization contracts; managing interfaces with the PHMC and Private Contractors; assisting in managing the interfaces with stakeholders and regulators; and assisting in the management of the key risks and key decisions associated with tank waste disposal.

F. Immobilized Tank Waste Storage & Disposal

The Immobilized Tank Waste Storage & Disposal project will provide safe storage and final near-surface disposal on the Hanford site for immobilized low activity tank waste (ILAW), and interim storage for immobilized high level waste (IHLW).

The ILAW project will be complete when the immobilized low activity tank waste is disposed of on the Hanford site, long term surveillance and monitoring of the ILAW disposal site is ongoing, and interim storage facilities have been decontaminated and decommissioned. The ILAW Storage and Disposal facilities will accept the immobilized low activity tank waste from TWRS privatization vendor. The ILAW waste packages will be placed in near surface storage and disposal facilities. The near surface disposal systems along with the waste package are to meet DOE regulatory requirements for near-surface disposal of low-level waste.

The IHLW Interim Storage Facility will receive IHLW, and transport these products to a Canister Storage Building (CSB), where the product will be stored until shipped to a geologic repository. Storage of the Phase I product in the CSB will consolidate the high level waste in one area and provide a safe environmentally sound storage of the IHLW product. HLW Interim Storage will provide additional storage capacity during Phase II privatization. In addition HLW Interim Storage will provide loadout capability for shipment of IHLW canisters to a geologic repository.

IHLW and ILAW waste receipts are currently planned to commence in 2007 and 2008, respectively.

G. External/Internal Communications

- (1) The Contractor shall participate in the ORP external/internal communications program to ensure that the full range of stakeholders receive information in a timely, accurate, complete, and professional manner. Contractor external/internal communications actions shall comply with DOE's Openness Initiatives and Public Involvement Policy and will be approved in advance by ORP.
- (2) The Contractor shall work with DOE to ensure that external/internal communications activities represent a singular and consistent DOE source of information about the ORP mission and its relationship to the Hanford site.
- (3) Contractor external/internal communications efforts and/or corporate communications not directly related to the ORP mission at Hanford, and/or approved by ORP, are not allowable costs under this contract.
- (4) The Contractor shall, when approved by ORP, keep the Hanford site workforce related directly to the work performed by the Contractor and subcontractors under this contract informed in a timely manner of all significant issues that could impact those workers.
- (5) At ORP's direction, the Contractor shall:
 - (a) Provide timely and consistent support for inter-Governmental liaison activities, including activities with Federal, State, local and Native American Governments.
 - (b) Provide logistical support for the Hanford Advisory Board and other public meetings.
 - (c) Respond in a timely fashion with information as requested by ORP in support of Freedom of Information Act and/or Privacy Act requests.
- (6) External/internal communications activities shall include, but not be limited to:
 - (a) Public Information
 - (b) Public Involvement
 - (c) Emergency Communications Activities
 - (d) Media Relations
 - (e) Site Tours, including transportation for tours
 - (f) Preparation/Maintenance of public information Audio/Video Products and Printed Materials

(7) The Contractor shall provide a portion of the cost support for the Hanford Technical Library run by PNNL. The exact amount will be determined annually by DOE.

H. Training

The Contractor shall coordinate training needs through the Hanford site training program as applicable.

I. Emergency Preparedness

The Contractor shall provide an emergency response capability for facilities under its control that implements the Hanford Emergency Management Plan (DOE/RL-94-02, Rev. 2), as modified from time to time. Because of the potential for the Contractor to become the Event Contractor as defined in the Hanford Emergency Management Plan, implementation includes, but is not limited to, maintaining a 24 hour per day, 7 days per week, capability to adequately staff the Emergency Operations Center position of Site Emergency Director within 30 minutes of receipt of notification from the Occurrence Notification Center of a TWRS emergency

J. Environmental Monitoring

The Contractor shall manage its facilities and operable units to assure compliance with environmental requirements and agreements. The Contractor shall work with the PHMC in providing legally and regulatory required air and liquid effluent and near facility environmental monitoring. The Contractor shall collect, compile, and/or integrate air and liquid effluent monitoring data from operations and activities under their control. The Contractor shall compare the monitoring data with regulatory and/or permit standards applicable to their activities and/or operations and provide the data and analyses to the PHMC for use in preparing the mandatory State and Federal environmental reports for the Hanford site.

PNNL monitors the Hanford environment to protect public safety and Hanford site ecological and cultural resources. This includes providing real time localized weather information for routine safety operations and emergency response, performing Hanford site and off-site environmental monitoring, as well as determining radiological exposure to the public and the environment. The Contractor shall provide appropriate environmental data for its facility and operable units to support Hanford site assessments and preparation of the Hanford Site Environmental Report.

PNNL is responsible for Hanford site groundwater monitoring. The Contractor will be knowledgeable of actions PNNL completes to develop monitoring plans for Contractor facilities and operable units. The Contractor shall maintain regulatory oversight capability to ensure that compliance for their facility and operable units is maintained, for the groundwater monitoring program by PNNL.

C.4 SUPPORT FOR PRIVATIZATION

The Contractor shall be responsible for providing support to the TWRS Privatization Project. Part of the TWRS mission is to separate the Hanford site tank waste into low-activity waste (LAW) and HLW fractions and to immobilize and dispose of them in an environmentally sound, safe, and cost-effective manner. To achieve this, a two-phased strategy that uses the private sector has been implemented to treat and immobilize the LAW and HLW fractions. The Contractor shall provide support to the Privatization Contractor as established in the August 1998 contract which states the general scope and timing requirements for the Privatization Infrastructure Program. These requirements are defined in more detail in the TWRS Privatization Project Interface Control Documents (BNFL 1998), and will be further modified as a result of the DOE decision on whether to proceed with privatization in August 2000.

The Contractor shall be responsible for coordinating the Privatization Contractor's requirements for infrastructure support with the Project Hanford Management Contractor, who shall provide such support as specified in TWRS Privatization Project Interface Control Documents.

C.5 CROSS-CUTTING SERVICES

The Contractor shall provide staff and equipment to obtain samples from high-level waste tanks for the PHMC and its subcontractors at the Hanford site. The sampling techniques may include grab sampling for liquids, core sampling for liquids and solids, and vapor sampling.

The Contractor shall receive liquid radioactive wastes that meet Contractor tank waste acceptance criteria from other site-wide facilities for storage in the double shell tank systems and eventual immobilization and disposal.

The Contractor shall provide support for Groundwater/Vadose Zone Integration activities.

The Contractor shall provide sitewide ventilation and balance services.

C.6 INTERACTIONS WITH OTHER PRIME CONTRACTORS

The Contractor may, from time to time, provide services to and receive services from these other prime contractors by memoranda of agreement. The Contractor shall utilize the specified expertise of the PHMC, PNNL, the Site Occupational Medical Contract (SOMC) and the Environmental Restoration Contractor (ERC) to accomplish the TWRS mission. The Contractors shall work with each other in identifying yearly requirements for services.

The Contractor shall also work with each of these Contractors to further the progress in cleaning up the Hanford site.

A. Fluor Daniel Hanford, Inc. (FDH)

Fluor Daniel Hanford, Inc. (FDH), as the Project Hanford Management Contractor (PHMC), under a separate prime contract, shall be responsible for planning, integrating, managing, and executing the Project Hanford programs, projects, operations, and other activities at the Hanford site as described in the Project Hanford Management Contract. The Contractor shall coordinate its activities with the PHMC in the best interests of the site and to the advancement of the TWRS Project.

B. Battelle Memorial Institute (BMI)

Battelle Memorial Institute (BMI), under a separate prime contract, operates the Pacific Northwest National Laboratory (PNNL). PNNL is one of five Office of Science multi-program laboratories which conduct research and development activities under prime contract to DOE. Some of the programs conducted in the Laboratory are part of the Office of Science laboratory system and require no integration with Hanford's Environmental Management (EM) programs; however, many of the research and technology development programs have direct relevance to the Hanford cleanup mission. As applicable, the contractor is encouraged to utilize the scientific and technical capabilities available from PNNL and shall work directly with PNNL to maximize the benefit to Hanford from the National research and development program. Workscope in support of the TWRS Project conducted by PNNL shall be integrated into TWRS project baselines.

C. Hanford Environmental Health Foundation (HEHF)

The Hanford Environmental Health Foundation (HEHF), under a separate prime contract, manages the SOMC to provide occupational health services through health risk management and occupational health services to personnel at Hanford. Through these services, HEHF strives to maximize the health and safety of Hanford personnel while minimizing personal and occupational health risks. HEHF's Health Risk Management program teams with the site in identifying and analyzing the hazards that Hanford personnel face in the work environment and brings an awareness of health and safety issues to Hanford's personnel. In support of DOE and all prime contractors, HEHF's occupational health services provide occupational medicine and nursing, medical surveillance, ergonomics assessment, exercise physiology, case management, psychology and counseling, fitness for duty evaluations, health education, infection control, immediate health care, industrial hygiene, and health, safety, and risk assessments.

D. BNFL, Inc. (BNFL)

BNFL, Inc. (BNFL), under a separate prime contract to DOE as managed by the DOE Office of River Protection, is responsible for the TWRS Privatization Project. This contract is to provide waste immobilization services on a fixed unit price basis. Waste immobilization will result in low activity waste ready for onsite disposal and high activity waste to be interim stored prior to offsite repository disposal. Immobilized waste product will be returned to DOE for storage and disposition.

E. Bechtel Hanford Incorporated (BHI)

Bechtel Hanford Incorporated (BHI), under a separate prime contract, is the ERC at Hanford. BHI plans, manages, executes, and integrates a full range of activities for the cleanup of groundwater, contaminated soils, and inactive nuclear facilities under DOE's Environmental Restoration Program. These activities include decontamination and decommissioning (D&D) of old production facilities; performing integrated sitewide planning for Groundwater/Vadose Zone Project, managing remedial action projects; developing an Environmental Restoration Disposal Facility (ERDF); and providing technology demonstration projects. As a project management contractor at Hanford, BHI accomplishes most of its work through competitively procured subcontractors. A major focus of the Environmental Restoration Program is protecting the Columbia River by cleaning contamination in Hanford's 100 Area.

F. Johnson Controls Incorporated (JCI)

Johnson Controls Incorporated (JCI), under a separate prime contract, is responsible for the Energy Savings Performance Contract. JCI is responsible to reduce energy consumption to comply with Executive Order 12902 and Energy Policy Act 1992, replace 50-year-old steam plants and improve ability to measure, monitor and manage energy use. JCI can also propose additional energy conservation measures. These include lighting system upgrades, water system modernization and automation, ventilation systems upgrade and addition of Utility Monitoring and Control Systems.

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D.1 PACKAGING

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practices and adequate to ensure acceptance by common carrier and safe transportation at the most economical rate(s).

D.2 MARKING

(a) Each package, report or other deliverable shall be accompanied by a letter or other document which:

(1) Identifies the contract by number under which the item is being delivered and;

(2) Identifies the deliverable item number or report requirement that requires the delivered item(s).

(b) For any package, report or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract.

D.3 REPORTS

Except for those reports required under Section F of this contract, where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall not utilize certified or registered mail or private parcel delivery service without the advance approval of the Contracting Officer.

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E.1 52.246-3 Inspection of Supplies--Cost-Reimbursement. (Apr 1984)

(a) *Definitions.*

"Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at a plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

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

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

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

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may--

(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

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

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to--

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

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

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

E.2 52.246-5 Inspection of Services--Cost-Reimbursement. (Apr 1984)

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

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

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

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may--

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may--

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

(End of clause)

E.3 52.246-25 Limitation of Liability--Services. (Feb 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that--

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

E.4 INSPECTION

The DOE Contracting Officer or a duly authorized Contracting Officer's Representative shall accomplish inspection of all products, reports, or services under this contract. Duly authorized CORs shall be designated in writing from time to time by the Contracting Officer, in accordance with Section G of this contract.

E. 5 ACCEPTANCE

The DOE Contracting Officer or a duly authorized Contracting Officer's Representative shall accomplish acceptance of all products, reports, or services under this contract (including "Reporting Requirements," if any). Duly authorized CORs shall be designated in writing from time to time by the Contracting Officer, in accordance with Section G of this contract.

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F.1 PERIOD OF PERFORMANCE

The period of performance for the work specified in Section C of this contract shall commence October 1, 1999, and continue through September 30, 2001, unless sooner terminated as provided for in other provisions of this contract.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance of this contract shall be the Hanford Site, near Richland, Washington and other facilities as directed by the Contracting Officer.

F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT

This contract may be extended at the unilateral option of the Government by written notice to the Contractor 120 days prior to the expiration date of this contract. Further, the Contractor agrees that the performance under said extension shall be accomplished within the estimated cost as set forth in Section B. of this contract. The Option Periods may be for a period from one to five years at the unilateral discretion of the Contracting Officer and may be exercised unilaterally for some lesser period.

F.4 EXERCISE OF OPTION

The Government has included options to purchase additional services and to extend the term of this contract. To demonstrate the value it places on cost efficient quality performance, the Department of Energy has provided a mechanism for continuing the contractual relationship with the Contractor if the Contractor performs at a level that meets or exceeds cost efficient quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance and the effectiveness of the Contractor's cost control under this contract.

F.5 DELIVERIES

All products, reports, or services under this contract shall be delivered to the Contracting Officer shown in Section G., or any other duly authorized Government representative, as designated in writing by the Contracting Officer.

F.6 REPORTING REQUIREMENTS

(a) The Contractor shall provide a reporting system capable of management information in the form of electronic databases and will report program performance on the technical work, schedule, and cost profile defined in the program baseline. Management information to be furnished shall include baseline data for the River Protection Project (RPP), all projects and RPP support activities; performance status and analysis information, including technical, cost, schedule, and funding management data; and identification of relevant issues to DOE Office of River Protection Project (ORP).

(1) At the end of each month, a critical path schedule network shall be updated to reflect the progress of that month. Based on this input, the network shall identify all near- and long-term major milestones that show a variance from the expected or target schedule.

(2) The Contractor's databases and reporting shall be available to ORP no later than 10 working days after the close of the reporting period.

(3) The Contractor shall provide the information necessary to support ORP in the preparation of reports required by regulatory agreements as the Tri-Party Agreement (TPA) and legislative mandates or DOE Headquarters required specific data which must be supported by the reporting system.

(4) Cost reporting shall identify month, current fiscal year, and cumulative-to-date planned, earned value, incurred cost, and annual and total estimates at completion. Financial reporting shall identify current fiscal year and cumulative-to-date amounts for budget authority allotted and obligated funds, as well as commitments. Cost data shall be in work breakdown structure (WBS) format and funding data shall be compatible with the WBS and the DOE budget and reporting classification structure.

(5) Cost and schedule variance, which exceeds thresholds specified by ORP, shall be addressed as part of the monthly report. The manager responsible for the work in question shall describe the magnitude of the variance, the cause of the variance, and the impact of the variance.

(b) The Contractor shall maintain a reporting system and recommend new and innovative methods of reporting and controlling technical program variance.

(c) Technical reporting is critical to managerial and financial control and shall provide status against technical objectives and requirements. Status reports will compare the technical requirement with a determination of progress and problems encountered in meeting those requirements. The Contractor shall support monthly, quarterly, semi-annual, and annual reports as required by the Contracting Officer or designated representative.

(d) ORP's minimum reporting requirements for the Contractor are identified in the list at the end of this section along with frequency of submission. Requirements are subject to change at the discretion of the Contracting Officer. Some of the reports shown below shall be provided by FDH on the Contractor's behalf in accordance with FDH letter 9955260A R5.

The following are reports required of the Contractor. This list is not complete and is subject to change at the discretion of the Contracting Officer as provided to the Contractor in writing.. The list does not include those reports that may be required by other terms of this contract or by DOE directives that are applicable to this contract. The Contracting Officer will determine the distribution list. Also, the Contracting Officer will determine the content and format requirements.

<u>Report Name</u>	<u>Frequency</u>
Management and Integration Plan	Y
Work Breakdown Structure (WBS)	Y,C
WBS Description	Y,C
Integrated Site Baseline	Y,C
Integrated Budget Formulation Package	Y,A
Hanford Site PerformanceReport	M, Q
Integrated Planning, Accountability, and Budgeting System- Information System http://www.em.doe.gov/ipabs/hand.html	M, Q
Contract Funds Status Report	M
Environmental Management Paths to Closure	Y,A
Quarterly Management Report (QMR)	Q
Financial Statements and Footnotes	Y
Depreciation Charges	M
DIMS Report	M
Functional Support Cost Report	S
Outlay Estimates by Appropriation Report	Q
FIVRS Cost Estimating reports	S
Report of Compensation	S
Report of Contractor Hours and Earnings	
Report of Contractors Expenditures for Supplementary Compensation	S
Indirect Cost Monthly Status Report	M
Pension Plan Actuarial Data	Y
Property Acquisitions and Dispositions	M
Fire Replacement Report	Y
Physical Inventory Report	Y

FREQUENCY CODES:	
A - As Required	Q - Quarterly
C - Change to Contractual Agreement	S - Semi-Annually
F - Final (end of effort)	Y - Yearly or Upon Renewal of Contractual Agreement
M - Monthly	O - Once After Award

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G.1 CORRESPONDENCE PROCEDURES.

To promote timely and effective administration, correspondence submitted under this contract shall include the contract number and shall be subject to the following procedures:

(a) Technical Correspondence. Technical correspondence shall be addressed to the DOE Contracting Officer's Representative (COR) with an information copy addressed to the DOE Contracting Officer (used herein excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of this contract which shall be subject to paragraph (b) below).

(b) Other Correspondence. All other correspondence shall be addressed to the DOE Contracting Officer with information copies of the correspondence to the COR and the DOE Patent Counsel (where patent or technical data issues are involved)

(c) The names of the DOE Contracting Officer and the DOE Contracting Officer's Representative(s) will be provided to the Contractor in writing at the initial award of the contract and at other times as that information may change.

G.2 CONTRACT ADMINISTRATION.

U.S. Department of Energy
Richland Operations Office
Procurement Services Division, MSIN A7-80
LMHC Contracting Officer
P.O. Box 550 or 825 Jadwin Avenue
Richland, WA 99352

G.3 BILLING INSTRUCTIONS.

(a) The Contractor shall provide periodic electronic invoices (or data supporting letter of credit drawdowns) and cost accrual and accrual reversal records to DOE's Richland Operations Office. Within the electronic invoice submission, the Contractor shall provide all invoice data elements required to: a) ascertain all goods and services provided by the Contractor were allowable and reasonable per the terms and conditions of the contract, and b) properly record all contract costs and payments in the DOE accounting system. This includes, but is not limited to: work breakdown structure (WBS) numbers, budget and reporting (BNR) numbers, fund-type, project baseline summaries (PBS) numbers, the fiscal year the funds were provided, Richland

Operations Office's project/task number, object classes, cost elements, resource types, and plant and equipment line item number (if applicable).

(b) Upon request, the Contractor shall also provide the Contracting Officer written documentation to support the electronic invoices at the address identified in section G.2.

G.4 DEFECTIVE OR IMPROPER INVOICES

Invoices not conforming to paragraph (a)(4) of contract clause FAR 52.232-25, Prompt Payment of Part II, Section I, of this contract, shall be deemed improper and thus defective. The Contractor shall provide the name or names (where practicable), title, phone number, office name, and complete mailing address of officials of the Contractor to be notified when the Government receives a defective or improper invoice below:

G.5 GOVERNMENT PROPERTY

The point of contact for contract administration relating to Government property is as follows:

U.S. Department of Energy
Richland Operations Office
Organizational Property Management Officer
Site Services Division MISN A2-45
P.O. Box 550 or 825 Jadwin Avenue
Richland, WA 99352

G.6 CONTRACTING OFFICER'S REPRESENTATIVE (COR) TECHNICAL DIRECTION - NOTIFICATION OF CHANGES

(a) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers constituting a change to this contract.

(b) Performance of the work under this contract shall be subject to the technical direction of the COR. The COR will be designated in writing by the Contracting Officer. The designation letters will include the COR's authority, responsibility, and limitations. The term "technical direction" is defined to include, without limitation:

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

- (2) Provision of written information to the Contractor that assists in the interpretation of drawings, specifications, or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government under the contract.
 - (4) Performance of technical monitoring; inspection; approval of shop drawings; testing; approval of samples; engineering evaluation; monitoring schedules and deliverables; and other functions not involving a change in the scope, price, or terms or conditions of a contract.
- (c) Technical direction must be within the Statement of Work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that does the following:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change, as defined in the contract clause entitled "Changes," which requires an adjustment of the estimated cost and/or fee;
 - (3) Changes any of the express terms, conditions, or specifications of the contract; or
 - (4) Interferes with the Contractor's right to perform.
- (d) All technical directions shall be issued in writing by the COR.
- (e) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his/her authority under the provision of this clause.
- (f) If, in the opinion of the Contractor, any instruction or direction (including actions, inactions, and written or oral communications) by the COR falls within one of the categories defined in paragraphs (c)(1) through (c)(4) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receipt of any such instructions or direction and shall request the Contracting Officer to modify the contract accordingly. On the basis of the most accurate information available to the Contractor, the notice shall state:
- (1) The date, nature, and circumstances of the conduct regarded as a change;
 - (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any related documents provided by the COR and documentation of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the cause for this acceleration;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including:

A. The contract line items has been or may be affected by the alleged change;

B. The labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

C. To the extent practicable, what delay and disruption in the manner and sequence of performance, and effect on continued performance, have been or may be caused by the alleged change;

D. The adjustments are estimated to contract costs, delivery schedule, and other provisions affected by the alleged change;

(6) Upon receiving the notification from the Contractor, the Contracting Officer shall do one of the following:

A. Advise the Contractor in writing within 30 days after receipt of the Contractor's letter that the technical direction is within the scope of the contract and does not constitute a change under the "Changes" clause, which requires an adjustment of estimated cost and/or fee;

B. Inform the Contractor in writing within 30 days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or

C. Advise the Contractor within a reasonable time, not longer than 10 days, that the Government will issue a written change order. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in this subsection.

(g) Failure of the Contractor and Contracting Officer to agree that the technical direction is within the Statement of Work of the contract, or a failure to agree upon the contract action to be taken with respect thereto, shall be subject to the contract clause entitled Disputes

G.7. MODIFICATION AUTHORITY

As stated above and notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual on behalf of the Government authorized to:

- (a) Accept non-conforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this contract.

G.8 REPRESENTATIONS AND CERTIFICATIONS

The Representations and Certifications, Section K of the solicitation DE-RP06-96RL13200 dated March 25, 1996, leading to award of the Project Hanford Management Contract and completed by Lockheed Martin Hanford Corp. as a Major Subcontractor, are hereby incorporated into this contract by reference.

LOCKHEED MARTIN HANFORD CORPORATION
SECTION H
SPECIAL PROVISIONS
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H.1 SEPARATE BUSINESS UNIT

The work performed by the Contractor signing this contract under this contract shall be conducted by a separate business unit (division, segment, etc.) from the parent company. This business unit may report or interface directly with a home office as approved by the Contracting Officer.

H.2 PROMISES AND COMMITMENTS

(a). Detailed below and incorporated into this contract is a list of negotiated promises made by the Contractor, which have not been identified elsewhere in this contract as a contract requirement. It is recognized that, as appropriate, these promises and commitments may be covered by a performance measure and/or an incentive fee arrangement. However, whether or not the promises/commitments are ever the subject of a performance measure and/or incentivization, the Contractor is expected to strive, in good faith, to meet the stated objectives as part of contract compliance. The extent to which the Contractor is able to achieve success and the extent to which the promises/commitments have been kept shall be considered by Department of Energy (DOE) in any determination to exercise the Options provided for in Section F of this contract.

The Contractor agrees to the following:

(1) After operations begin, subsequent vacant positions for work under the contract shall be filled in accordance with the Contractor's normal business practices, subject to any other applicable requirements of this contract, including Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

(2) The Contractor shall assume the assets, liabilities, and other obligations and continue the defined benefit pension plans (does not include any defined contribution plans) of the Fluor Daniel Hanford, Inc. and its Major Subcontractors (PHMC) and its predecessors, on a multiple employer basis for employees of the Contractor.

(3) The Contractor shall offer an Internal Revenue Service qualified defined contribution plan(s) for employees of the PHMC and its predecessors that will accept employee account assets and liabilities from the 401(k) plans of the PHMC and its predecessors. The provisions of the plan(s) are at the sole discretion of the Contractor.

(4) The Contractor shall credit the length of service of employees currently employed by the PHMC and its predecessors, who are hired for work under this contract toward the service period required for benefits of this contract relating to vacations, sick leave, health insurance, layoff, recall, or other benefits. This includes accepting severance pay credits earned by the employees of the PHMC and its predecessors to the extent that the

employees have not exercised any severance pay rights with the PHMC and its predecessors.

(5) The Contractor shall respect the right of employees to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities. The Contractor will be performing substantially similar operations at the same site as the PHMC and its predecessors; and, as a result of the hiring preference, a majority of their potential bargaining unit employees are likely to be former employees of the PHMC and its predecessors who had been represented by the respective certified collective bargaining agent. Therefore, the collective bargaining representative of such employees is to be accorded full recognition for negotiating their terms and conditions of employment, and the Contractor shall initially consult with the respective certified collective bargaining agent regarding the initial terms and conditions of employment of those employees who had been represented by the certified collective bargaining agent. The Contractor shall be obligated to recognize and bargain with the certified collective bargaining agent of the PHMC and its predecessors bargaining unit employees as a successor employer, consistent with the National Labor Relations Act.

(6) The Contractor shall initially provide for continuity of insurance coverage of employees of the PHMC and its predecessors who are absent and receiving payments under the following programs: Long Term Disability, Short Term Disability, and Workers' Compensation, and including any then current COBRA (Consolidated Omnibus Budget Reconciliation Act) participation in a health benefits insurance program. Such insurance coverage shall be provided under the same terms and conditions as provided in existing programs, including the right of management to change those terms and conditions, where applicable.

(7) The Contractor shall initially provide for continuity of insurance coverages (health, life, other, as applicable) of employees who have retired from the PHMC and its predecessors to the extent currently provided by the PHMC and its predecessors. Such insurance coverage shall be provided under the same terms and conditions as provided in existing programs, including the right of management to change those terms and conditions, where applicable.

(8) The Contractor shall work with DOE and the Tri-Cities to create a local economy which is substantially less dependent on a DOE Hanford payroll. The Contractor commits, with the Project Hanford Management Contract contractors, to help create 3,000 new jobs in the Tri-City area* by the end of the initial contract period. The Contractor will assume 30% of the balance of jobs following validation of the cumulative number of jobs created through FY 1999 by RL.

* As defined by the FY 1999 "Economic Transition Plan for Project Hanford," MP-006.

- (9) Of the total Contractor budget, 50% shall be outsourced by 2001 and within two years, 60% of all outsourced dollars shall be directed to local, regional, and Native American businesses. For purposes of this paragraph, outsourcing means contractual commitments to entities other than the Contractor itself.
- (10) The Contractor shall leverage local economic benefit from execution of this contract, and from the worldwide industrial and commercial interest of the Contractor.
- (11) The Contractor shall reduce DOE capital and fixed operations costs.
- (12) The Contractor shall progressively increase the ratio of outsourced jobs to site staff.
- (13) In collaboration with Pacific Northwest National Laboratory (PNNL), the Contractor shall implement technology transfer and intellectual property management programs to stimulate commercialization, privatization, and entrepreneurship.
- (14) The Contractor shall aggressively pursue conversion of valuable assets (people, intellectual property, equipment, material, facilities) to commercial productive use.
- (15) The Contractor shall mentor local suppliers and contractors to help bring their systems and deliverables into line with best-in-class criteria and shall create financial incentives that encourage best-in-class suppliers outside the region to establish and serve from a Tri-Cities base of operations.
- (16) The Contractor shall implement the DOE Mentor/Protege program at Hanford.
- (17) Incentives shall be a cornerstone of the Contractor's technology transfer program. Inventors will benefit through royalty sharing, equity ownership in license-based new businesses or the opportunity to start a new business. The Contractor shall establish an Entrepreneurial Leave of Absence program. The Contractor shall coordinate with their Purchasing to leverage idle site facilities, equipment, and materials for the benefit of local businesses and new business creation. The Contractor shall market these resources aggressively, and shall work closely with organizations such as Tri Cities Industrial Development Council (TRIDEC) to leverage these assets into jobs.
- In the licensing arena, the Contractor will work with PNNL to provide reduced royalty terms and other incentives for licensees who agree to establish businesses in the region.
- (18) The Contractor's technology transfer activity will be modeled after Lockheed Martin's programs at Oak Ridge and Sandia, covering industrial and commercial relationships (from CRADAs and licensing to Facility User, Technical Assistance, and Funds-In Agreements).

Working closely with PNNL, the Contractor shall ensure that intellectual property and technologies arising from the Contract Statement of Work are evaluated for commercial potential and, where appropriate, offered for licensing.

(19) The Contractor shall tailor the Technology Audit and Resource Inventory to produce a contract specific database of transferable skills, tools, and capabilities. This continuing process shall promote awareness of assets, prerequisite to targeting candidates for outsourcing, privatization, licensing, cooperative research and development, technical assistance, facility user agreements, and non-mission asset loan or transfer.

(20) The Contractor's investment in economic transition is the commitment of a portion of fees earned through performance to benefit the community. This reinvestment shall be structured to leverage the skills, relationships, and purchasing power of Lockheed Martin, including Lockheed Martin Services, Inc. (LMSI) to the benefit of the Tri-Cities. The proposed step formula for contributions in any given year is:

- 6% of total fees earned between \$3 million and \$6 million

- 8% of total fee over \$3 million, if fee is between \$6 million and \$12 million

12% of total fee earned over \$3 million, if fee is over \$12 million

The Contractor commits to the continued expansion of LMSI business into non-Hanford markets as long as LMSI remains a major supplier of information resource management (IRM) services to Hanford contractors.

Lockheed Martin's Tri-Cities based Services Division office shall outsource 520 jobs from existing Hanford information resource management functions. Although this Hanford requirement will decrease over the next five years through rightsizing, we intend to maintain the 520 level through pursuit of non-Hanford work.

(21) The Contractor shall work with local and state governments and economic development groups to target "anchor" industries, evaluate infrastructure development needs, attract targeted businesses, and promote new starts, relocations, and investments in Tri-Cities initiatives. The Contractor shall maintain close ties to corporate executives who are responsible for specific business areas to gain access to client and supplier bases.

The Contractor, working with Washington State University (WSU) Business LINKS and TRIDEC, shall assign and supply experienced people from the Contractor's parent corporation or affiliate businesses to assist and counsel local citizens wishing to start or expand a business. Professionals experienced in developing business plans, financial evaluations, and marketing plans will be made available for this program.

(22) The Contractor agrees to provide direct funding or to facilitate third party financing for business opportunities that offer high potential for regional growth. The Contractor shall establish a \$2.440M investment fund (this number represents the Contractor's share in the \$10M original investment fund) from their private resources for this use. Credit will be given against this fund for prior Contractor participation in Columbia Basin Ventures LLC investments. The Contractor shall partner with local academic (WSU, Columbia Basin College [CBC]), research (PNNL), and industry organizations to help foster entrepreneurial interests in the Tri-Cities area.

The Contractor shall work through existing local agencies (WSU Business LINKS, TRIDEC, Tri-Cities ports and municipalities, and the Benton Franklin Regional Council), providing personnel to support their initiatives and enhance their effectiveness. The Contractor shall put its corporate buying power and supplier network to use in efforts to attract industry and broaden the market reach of Hanford spin-off companies.

Personnel expert in new business startup and expansion shall be assigned to WSU Business LINKS to provide the following:

- A. support to individuals who are considering starting a business,
- B. counseling to existing businesses, and
- C. evaluation of the operations of small manufacturing companies.

The Contractor shall work with WSU, PNNL, TRIDEC and other economic development groups to develop and market the Science and Technology Park as part of the industrial recruiting effort of the Tri-Cities. The Contractor shall assign an experienced employee to serve on the Board of Directors of the Park.

(23) The Contractor shall partner with the northwestern division of the Associated Western Universities (AWU NW). The Contractor shall develop an engineering Mentorship Program to bring science and engineering students into contact with the Contractor managers at engineering and environmental remediation projects.

The Contractor shall work with CBC and WSU Tri-Cities (an AWU NW member) to design and implement education/training programs keyed to markets that can use skills acquired at Hanford in order to assist the diverse Hanford workforce transition more effectively into the private sector. This effort will be integrated into the Contractor's Training Program.

(24) Contractor employees will be encouraged to donate their time to instruction in local schools through programs such as MathCounts, Engineer-in-the-Classroom, and partnering with local elementary schools to provide science or computer instruction and supplies. Managers shall be encouraged to donate a minimum of 40 hours/year in community service. This involvement shall be a consideration in manager performance evaluations.

H.3 TRI-PARTY AGREEMENT

The DOE, the U.S. Environmental Protection Agency Region 10 (EPA), and the Washington State Department of Ecology (Ecology) have entered into the Hanford Federal Facility Agreement and Consent Order, referred to as the Tri-Party Agreement (TPA) to ensure compliance with the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). The TPA sets forth certain requirements and milestones for cleanup activities at the Hanford Site. The Contractor agrees to plan and perform the work under this contract in accordance with DOE direction concerning implementation of the TPA and achievement of current and future milestones in the TPA.

H.4 ENVIRONMENTAL RESPONSIBILITY

General. Contractor is required to comply with all environmental laws, regulations, and procedures applicable to the work being performed under this contract. This includes, but is not limited to, compliance with applicable Federal, State and local laws and regulations, interagency agreements such as the Hanford Federal Facility Agreement and Consent Order [AKA Tri-Party Agreement (TPA)], consent orders, consent decrees, and settlement agreements between DOE and Federal and State regulatory agencies.

(a) Environmental Permits. The Contractor is responsible to DOE for operation of the treatment, storage and/or disposal (TSD) units known as the Single Shell Tank System (SST), Double Shell Tank System (DST), 204 AR Waste Unloading Station, and the Grout Treatment Facility (GTF) in compliance with the laws, regulations, etc., as stated in the paragraph above and in accordance with the terms of the environmental permits that have been certified in writing by the Contractor, and signed by DOE as “owner/operator” and by the Contractor as “co-operator.”

(b) Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE shall sign permits as owner or co-operator with Contractor as operator or co-operator. DOE will co-sign Hazardous Waste permit applications as owner/co-operator where required by applicable law. In this scenario, the Contractor must coordinate its actions with DOE. The Contractor shall accept assignment as “co-operator” of environmental permits, permit applications, or other related documentation associated with the TSDs described in the above paragraph, currently held by DOE and Fluor Daniel Hanford, Inc. (FDH). DOE will sign Hazardous Waste and State Dangerous Waste Permit applications as “owner/operator.” DOE is responsible for timely notification to the Contractor of any issues or changes in the regulatory environment that impact or may impact Contractor implementation of any permit requirement. The Contractor is responsible for timely notification to DOE of any issues or changes in the regulatory environment that impact or may impact implementation of any permit requirement.

(c) Multiple Contractors as Permittees. Where appropriate, in situations where multiple contractors are operators or co-operators of operations requiring environmental permits, DOE shall sign such permits as owner or co-operator and affected contractors shall sign as operators, or co-operators. In this scenario, the Contractor must coordinate as appropriate with DOE and other contractors affected by the permit.

(d) Permit Applications. The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials and permits submitted to regulatory agencies for the purposes of obtaining a permit. In the event the permit application is required to be co-signed, submitted by DOE, or is related to a permit in which DOE is a permittee, the Contractor shall provide the application for review and comment. Whenever reasonably possible, all such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. Contractor shall normally provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence that shall be performed by DOE in a prompt manner. Special circumstances may require permits to be submitted in a shorter time frame.

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

(f) Copies, Technical Information. The Contractor shall provide DOE copies of environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE shall provide the Contractor access to copies of environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law.

The Contractor and DOE shall provide to the other copies of documentation, such as, letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the contract work.

The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other Hanford Site contractor environmental permits when such applications or revisions are related to Contractor's operations. Upon request, Contractor or DOE shall provide to the other access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. The Contractor and DOE shall provide to each other a certification statement relating to such technical information in the form required by the following paragraph.

(g) Certifications. The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification statement shall be signed by the individual authorized in writing by the Contractor to sign such certification statements submitted to Federal or State regulatory agencies under the applicable regulatory program.

(h) Fines, Penalties, Allowable Costs. The Contractor shall accept, in its own name, service of proposed notices, or notices of, correction, penalty, fine, violation, administrative orders, citation, or notice of alleged violations, (e.g., NOC, NOP, NOF, PNOV, NOV, NOAV) and any similar type notices issued by Federal or State regulators to the Contractor resulting from or relating to Contractor’s performance of work under this contract, without regard to liability. The Contractor shall immediately notify DOE of such receipt and shall provide copies or originals of such documents as soon as possible thereafter. The allowability of the costs associated with fines and penalties shall be governed by provisions of this contract and applicable law.

Regarding civil fines and penalties, Contractor shall be reimbursed as an allowable cost for such fines and penalties if the Contractor demonstrates to the authorized Contracting Officer that - -

- (1) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the authorized Contracting Officer unless the Contractor knew or should have known that the conduct resulting in such fine or penalty would violate environmental laws, regulations, permits, and requirements and the Contractor failed to timely advise DOE of the consequences; or
- (2) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.

(i) Negotiations. DOE may in its discretion choose to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraph (h) above. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or concurrence from the Contracting Officer or his/her authorized representative prior to making such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments. In the event DOE chooses to allow the Contractor to conduct such negotiations without direct DOE participation, the Contractor shall keep DOE fully advised as to the progress of such negotiations.

(j) Termination, Expiration, Permit Transfer. In the event of expiration or termination of this contract, DOE may require the Contractor on an allowable cost basis to take all necessary steps to transfer to DOE some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs; claims, demands, fines and penalties, including reasonable legal costs arising prior to the date such permits are transferred to another party. Contractor shall not be liable for any such claims occurring after formal transfer of this contract unless said claims result from Contractor's action or inaction

(k) Miscellaneous. The Contractor shall accept as co-operator assignment or transfer of permits currently held by DOE and its existing contractor. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this clause. Any such schedule revision shall be effective only upon written approval from the Contracting Officer. In the case of permit applications that are cosigned by DOE with the Contractor, DOE may sign the application through either the Manager of the Richland Operations Office or the Manager of the Office of River Protection, or the Managers' authorized designees, as determined by DOE in its sole discretion.

H.5 SECURITY

In all matters of security at its installations, DOE retains absolute authority and neither the security rules nor their administration are matters for collective bargaining between management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both

parties. To the fullest extent feasible, DOE will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

H.6 EMERGENCY CLAUSE

(a) The Manager, Office of River Protection (ORP), or designee shall have sole discretion to determine when an emergency situation exists as a result of facility operations within the physical boundaries defined by this contract affecting personnel, public health, safety, the environment, or security. The Manager, Richland Operations Office, or designee has the discretion to determine when an emergency conditions exists elsewhere on the Hanford Site that may affect ORP employees. In the event the Manager, Office of River Protection, or designee determines such an emergency exists, the Manager, Office of River Protection, or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The Manager, Office of River Protection, or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.

(b) The Contractor shall include this clause in all subcontracts at any tier for work performed at the Hanford Site.

H.7 SHUTDOWN AUTHORIZATION

(a) In the event of a specific imminent environmental, health, or safety hazard, identified by facility line management, DOE Facility Representatives, operators, or facility health and safety personnel overseeing facility operations, the individual or group identifying the specific imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard. This shall be accomplished by directing the operator/implementer of the activity or process causing the imminent hazard to shutdown the activity or the facility or by initiating emergency response actions or other actions to protect the health and safety of the workers and the public and to protect DOE facilities and the environment. (DOE designated Facility Representatives provide technical oversight of operations to help line management ensure that the facilities are operated in a safe, healthful, and environmentally acceptable manner in accordance with DOE Orders and other requirements. As such, they have "Stop Work" and "Shutdown Authorization" authority.)

In the event an imminent environmental, health, or safety hazard is identified, the individual or group that identified the hazard shall coordinate with an appropriate Contractor official, who will direct as needed, broader shutdown actions or other actions, as required. Such mitigating actions shall be subsequently coordinated with the Manager,

Office of River Protection, the facility/site DOE management, and the facility/site Contractor management. The shutdown direction shall be promptly confirmed in writing from the cognizant Contracting Officer.

This authority is in addition to the contract clause, FAR 52.242-15, "Stop-Work Order."

(b) In the event of a non-imminent environmental, health, or safety hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or by independent oversight organizations, the individual or group identifying the potential environmental, health or safety hazard may recommend corrective action or facility shutdown. However, the recommendation must be coordinated with the Contractor management at the facility, the responsible DOE manager, and the Manager, Office of River Protection. Any written direction to shutdown operations will be issued in coordination with the Contracting Officer.

(c) After shutdown, an operation or facility may become operational only after receiving written authorization from the Manager, Office of River Protection, or his delegated authority, in coordination with the Contracting Officer.

(d) The Contractor shall provide in its purchasing system policies, practices, and procedures for flowdown of appropriate requirements of this clause to subcontractors performing work on-site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described herein.

H.8 WITHDRAWAL OF WORK

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

(b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or (4) or any other reason deemed by the Contracting Officer to be in the best interests of the Government.

If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the contract clause, FAR 52.249-6, "Termination (Cost-Reimbursement)."

(d) If the Contracting Officer withdraws any work, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.9 ASSIGNMENT OF SUBCONTRACTS

The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this contract.

H.10 INFORMATION

(a) Release of Information

(1) The Contractor shall be responsible for developing, planning, and coordinating proactive approaches to timely dissemination of information regarding DOE unclassified activities onsite and offsite as directed by the Contracting Officer.

(2) The Contractor shall be responsible for following DOE guidelines and/or procedures for all oral, written and audio/visual information material prepared for public use, including technical information.

(b) Unclassified, Controlled, Nuclear Information (UCNI): Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this contract, may contain Unclassified, Controlled, and Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and clauses, DEAR 970.5204-2, "Security" and DEAR 970.5204-70, "Classification/Declassification."

(c) Confidentiality of Information: To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information that is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

(3) Information that the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

(4) Information that the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

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

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

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

(d) The Government reserves the right to require the Contractor to include this clause or a modified version of this clause in any subcontract as directed in writing by the Contracting Officer.

H.11 ADVANCE UNDERSTANDING ON PERSONNEL COSTS, POLICIES AND PROCEDURES

The DOE has reached an advance understanding with the Contractor on certain personnel costs, related expenses, policies, and procedures. These costs are those associated with personnel policies and procedures, which the Contractor will apply to work under this contract. Advance review by DOE and written approval by the Contracting Officer of such personnel policies and procedures is required. Any exceptions noted in the Contracting Officer's written approval will govern the Contractor's application of the personnel policies and procedures under this contract. Any deviation from the personnel policies and procedures so approved must have DOE approval before costs occasioned thereby will be considered allowable (either direct or indirect) under the subject contract. In addition, DOE approval will be required for total annual compensation paid to each person designated as Key Personnel and identified in the contract clause, DEAR 970.5204-42, "Key Personnel", exclusive of bonus or incentive compensation pay which will not be an allowable cost under this contract. The Advance Understanding will be part of this contract and included in Section J.

H.12 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate labor standards in accordance with the Davis-Bacon Act, which shall apply to work performed under this contract. Where requested by DOE, the Contractor shall provide such information in the form and timeframe required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts.

H.13 SERVICE CONTRACT ACT (SCA) WAGE DETERMINATION

For any subcontract subject wholly or in part to the provisions of the McNamara-O'Hara Service Contract Act (SCA), the Contractor shall require the subcontractor to pay service employees employed thereunder no less than the minimum wage and fringe benefits set forth in the applicable currently effective wage determination(s). Prior to the beginning of each contract year/option period, the agency Contracting Officer shall file a request for a revised wage determination (WD) with the U.S. Department of Labor. Any revised WD received shall be incorporated into the affected subcontract by modification.

H.14 HANFORD SITE STABILIZATION AGREEMENT

(a) The Site Stabilization Agreement for all construction work for the DOE at the Hanford Site consists of a Basic Agreement dated September 10, 1984, plus an Appendix A. (The Site Stabilization Agreement is available in the DOE Public Reading Room. The Site Stabilization Agreement will be made a part of this contract by reference upon award. The Contractor shall be required to comply with the most current Site Stabilization Agreement as modified throughout performance of the contract.)

(b) This clause applies to employees performing work under contracts or subcontracts subject to the Davis-Bacon Act, in the classifications set forth in the Site Stabilization Agreement for work performed at the Hanford Site.

(c) Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory Contractor or subcontractor shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A.

(d) Contractors and subcontractors at all tiers who are not signatory to the Site Stabilization Agreement and who are not required under Paragraph C above to become signatory to the Site Stabilization Agreement shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Site Stabilization Agreement:

Article VII Employment, Section 2 only
Article XII Non-Signatory Contractor Requirements
Article XIII Hours of Work, Shifts, and Overtime
Article XIV Holidays
Article XV Wage Scales and Fringe Benefits, Sections 1 & 2 only
Article XVII Payment of Wages-Checking In & Out, Section 3 only
Article XX General Working Conditions
Article XXI Safety and Health

(e) The Contractor agrees to make no contributions in connection with this contract to Industry Promotion Funds, or similar funds, except with the prior approval of the Contracting Officer.

(f) The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964, (Public Law 88-349-78 Stat. 238-239) and the Department of Labor regulations in implementation thereof (29 CFR, Parts 1,3,5).

(g) The Contracting Officer may direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the involved parties modify the Site Stabilization Agreement, including its Appendix A.

(h) (1) In the event of failure to comply with Paragraphs C, D, E, F, and G above, or failure to perform any of the obligations imposed upon the Contractor and its subcontractors, the Contracting Officer may withhold any payments due to the Contractor and may terminate the contract for default.

(2) The rights and remedies of the Government provided in this Paragraph (1) above shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this contract.

(i) The requirements of this paragraph are in addition to, and shall not relieve the Contractor of any obligation imposed by other clauses of this contract, including those entitled "Davis-Bacon Act" (FAR 52.222-6), "Contract Work Hours and Safety Standards Act-Overtime Compensation" (FAR 52.222-4), "Payrolls and Basic Records" (FAR 52.222-8), "Compliance with Copeland Act Requirements" (FAR 52.222-10), "Withholding of Funds" (FAR 52.222-7), and "Contract Termination--Debarment" (FAR 52.222-12).

(j) The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this paragraph, and to preserve such records for a period of 3 years thereafter for all employees performing such work. Such records will contain the name, address, social security number of each such employee, correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by Paragraphs (c), (d), (e), (f), and (g) of this contract clause. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit employee interviews during working hours on the job.

The Contractor agrees to insert this clause, including this paragraph (k), in all subcontracts for the performance of work subject to the Davis-Bacon Act.

H.15 PAYMENTS AND ADVANCES

(a) Payment of fee amounts earned. Fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fee payments may be withdrawn against the letter-of-credit without prior written approval of the Contracting Officer.

(b) Payments on Account of Allowable Costs. Allowable costs, determined in accordance with the cost principles in Subpart 31.2 of the Federal Acquisition Regulation (FAR) as supplemented by Subpart 931.2 of the DOE Acquisition Regulations (DEAR), or payments for other items specifically approved in writing by the Contracting Officer, shall be made from advances of Government funds limited by Section B.2. "Obligation of Funds". When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment

purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Final Incurred Cost Submittal. Proposed charge-out rates for the following fiscal year will be submitted each year in accordance with direction provided in the Baseline Updating Guidance issued in the spring of each year pertaining to the subsequent execution year and outyears.

(1) The Contractor shall submit an adequate final incurred cost submittal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(i) The submitted cost shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(ii) Failure by the parties to agree on final annual incurred cost shall be a dispute within the meaning of the Disputes clause.

(2) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(d) Special financial institution account use. All advances of Government funds shall be withdrawn pursuant to a letter-of-credit in favor of the bank or, at the option of the Government, shall be made by direct payment or any other payment mechanism to the Contractor, and shall be deposited only in the Special Demand Deposit Account referred to in the Special Bank Account Agreement, which is incorporated into this contract included in Section J. No part of the funds in the Special Demand Deposit Account shall be (1) commingled with any funds of the Contractor or (2) used for a purpose other than that of making payments for costs allowable and, if approved, fees earned under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such Special Demand Deposit Account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

(e) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any Special Demand Deposit Account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the

Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(f) Certification and penalties. The Contractor shall prepare and submit a monthly voucher for the total of costs incurred and accrued for the period covered by the voucher. It is anticipated that this will be a monthly submission unless otherwise agreed to by the Contracting Officer. Vouchers must be formatted in a manner approved by the Contracting Officer. Along with the annual final indirect cost submission the Contractor shall provide a certification subject to the penalty provisions for unallowable costs as stated in the contract clause, 52.242-3, "Penalties for Unallowable Costs."

(g) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and earned fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the Contractor with DOE's patent clearance requirements, and (2) the furnishing by the Contractor of:

(i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under this contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor should provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause DEAR 970.5204-31, "Insurance-Litigation and Claims);

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

In arriving at the amount due the Contractor under this clause, there shall be deducted, (1) any claim which the Government may have against the Contractor in connection with this contract, and (2) deductions due under the term of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Demand Deposit Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(h) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification, as the Contracting Officer shall prescribe.

(i) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(j) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer and, to the extent consistent with those requirements, shall be deposited in the Special Demand Deposit Account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

(k) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

H.16 FINANCIAL MANAGEMENT SYSTEM

(a) The Contractor's accounting system must have the electronic capability to generate and transmit by acceptable mode, the periodic detailed accounting information, at a minimum monthly and at year-end, to the DOE's Primary Accounting System for reporting financial activity under this contract in accordance with DOE requirements.

(b) The Contractor shall maintain and administer a financial management system that (1) is suitable to provide proper accounting in accordance with Generally Accepted Accounting Principles, and Cost Accounting Standards, except as modified by DOE requirements; (2) provides accurate and reliable financial and statistical data on a timely basis; (3) ensures accountability for all assets; (4) supports financial planning and budget formulation, validation, execution, and the recasting or changing of DOE funding or task codes such as Budget and Reporting Numbers (B&R), program baseline summaries (PBS), and local projects/tasks; (5) maintains proper funding authorization; (6) provides sufficient management controls per DEAR 970.5204-20 Management Controls, and internal controls; (7) integrates and reports the financial information for subcontractors; and (8) provides all other necessary financial reports which shall include accumulating and reporting indirect and support costs by function. The Contractor will be requested, periodically, to provide certain functional cost information not normally provided to DOE on a routine basis, but should be otherwise available through query of the Contractor's accounting system.

(c) The Contractor shall submit a plan for DOE approval of any substantive change to the financial management system or subsystems at least 60 days in advance of implementation. This plan must identify the cost and schedule for changing from the existing financial systems, and provide a comparison of the capabilities of the new system(s) to the existing system(s). Any new systems are subject to audit or review.

H.17 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

(a) Definitions

(1) Adverse Determination means -

(i) A judgement of liability against the Contractor and in favor of the employee in an action in a judicial forum;

(ii) A recommended decision under 29 CFR 24.6 by an Administrative Law Judge that the Contractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;

(iii) An initial agency decision, under 10 CFR 708.10 that the Contractor has engaged in conduct prohibited by 10 CFR 708.5;

(iv) Any decision against the Contractor by the head of an executive agency under '6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding section 315 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), see Paragraph C);

(2) Retaliatory or Discriminatory Acts mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by the Contractor during the term of this contract as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a).

(3) Employee Action means an action filed in Federal or state court for redress of retaliatory or discriminatory action by the Contractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or any other complaint filed against the Contractor for retaliatory or discriminatory acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.

(4) Litigation Costs include attorney, consultant, and expert witness fees, but exclude costs of settlements and judgements.

(b) All costs incurred in the investigation and/or defense of an employee action under this contract clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief, which may be granted, may not be paid from any advanced funding provided pursuant to this contract. Notwithstanding the foregoing, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provisions of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the contract, will be determined in accordance with this clause.

(c) Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the contract. Costs incurred in pursuit of mediation or other forms of alternative dispute resolution are allowable, if approved as just and reasonable by the Contracting Officer, and no adverse determination of the employee's claim has occurred. Additionally, the Contracting Officer may, in appropriate circumstances, reimburse the Contractor for litigation costs and costs of judgements and settlements which, in aggregate, do not exceed any prior settlement offer approved by the Contracting Officer and rejected by the employee.

(d) Except as provided in Paragraphs (c), (e), and (f) of this clause, any other cost associated with an employee action (including litigation costs connected with, a judgement resulting from, or settlement subsequent to the employee action) are not allowable unless the Contractor receives a judgement or final determination favorable to

the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable, and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.

(e) Costs incurred by the Contractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either (1) specific terms or conditions of the contract or (2) written instructions from the Contracting Officer shall be allowable.

Reasonable litigation costs and settlement costs incurred by, and judgements entered by the Office of Hearings and Appeals against, the Contractor as a result of an employee action for discrimination under 10 CFR 708 are allowable where the Office of Contractor Employee Protection has issued a proposed disposition denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearings and Appeals.

(f) The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under FAR 31.205-47.

(g) The Contractor shall insert or have inserted the substance of this clause in all cost reimbursement subcontracts, with respect to work performed at a DOE-owned or -leased facility where 10 CFR 708 is also applicable under provisions of the contract clause, DEAR 970.5204-59, "Whistleblower Protection for Contractor Employees."

H.18 PERFORMANCE, PERFORMANCE MEASURES AND INCENTIVES, AND FEE DISTRIBUTION

(a). Establishment of Baseline Performance Incentives

The Government will develop performance objectives, measures, and expectations along with related fee distribution for the coming fiscal year which, after discussion with the Contractor, will be unilaterally added to the contract. The performance incentives and fee distribution will reflect the priority and importance that DOE places on accomplishment of key results. The Contractor may propose additional performance objectives, measures, and expectations that may be negotiated prior to placement in the contract. The final determination of incentives and related fee distribution will be made solely by DOE and DOE may unilaterally add any and all of them in a modification to this contract. However, if the Contractor disagrees with the established objectives, measures, expectations, and related fee distribution, the Contractor may appeal the determination to the Head of the Contracting Activity (HCA). However, the final decision by the HCA shall not be subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). The objectives, measures, expectations, and related fee distribution will be set forth in Section J, Appendix D, of this contract.

(b) Performance Incentive

After determination of objectives, measures, expectations, and related fee distribution for a fiscal year, the Contractor and DOE shall execute Performance Incentives in the format included in Section J, Appendix D, for each incentive. The Performance Incentives set forth the agreed upon criteria/specifications for acceptable performance of such objectives, measures, and expectations. The criteria/specifications set forth in the Performance Incentives shall be mutually agreed to by both DOE and the Contractor. In the event the parties cannot mutually agree, the final decision shall be made solely by the HCA and shall not be subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(c) Interference

In the event the Contractor believes the DOE has interfered with its ability to meet specific performance incentives, it may present evidence to support this position along with a proposed adjustment to the Head of the Contracting Activity. The Head of the Contracting Activity will make a determination and provide a copy of that determination to the Contractor. The HCA's determination will be final and not subject to the contract clause entitled, "Disputes-Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(d) Positive and Negative Incentives

A critical few of the performance objectives, measures, and/or expectations have fee directly assigned to their accomplishment, or have a negative deduction from earned fee for failure to accomplish. If fee is assigned to an objective or measure, then in order to receive the fee amount set out for a single objective or measure, all performance expectations supporting that objective or measure must be met. If one or more of the expectations is not met, none of the fee associated with the objective or measure will be paid. If a performance expectation has an incentive level that is met, an incentive fee would be paid in addition to any fee earned for accomplishment of the objective, measure, and/or expectation. In addition, if the incentivized expectation is accomplished, its incentive fee portion would be paid regardless of whether or not the fee was earned on the overall objective or measure. Certain of the objectives, measures, and/or expectations may have a negative deduction set out. If the negative level of performance is not surpassed, no fee will be paid for these objectives; measures and/or expectations and further the negative deduction will be made from other fees earned. In no event, however, would the aggregate of all negative deductions exceed the amount of fee earned for the given Fiscal Year. Furthermore, for FY 2000, the aggregate of all negative deductions actually invoked shall not exceed 20% of the total available fee for all Performance Incentives.

(e) Accomplishment of Incentives

In order for any expectation to be considered performed, not only must it meet the criteria of the Performance Incentive, but the work must be accomplished within the approved cost and schedule thresholds specified in the Performance Incentive, as modified through the Change Control process.

(f) Fee Re-Allocation due to Cancellation or Changes

If, for any reason, DOE cancels an objective, measure, and/or expectation, the fee attached to that objective, measure, and/or expectation shall be reallocated to a new objective, measure, and/or expectation or to existing other objectives, measures, and/or expectations or to both new and existing objectives, measures, and/or expectations. The decision as to the new objective, measure and/or expectation and/or the decision as to which existing objectives, measures, and/or expectations fee may be reallocated, is at DOE's unilateral discretion.

(g) Fee Determination at End of Period

At the conclusion of the annual performance period the government shall evaluate the contractor's performance to determine the performance based fee earned during the year. The evaluation of performance against objectives, measures, and expectations will be a consideration in (1) incentive fee determinations by the HCA, (2) in the DOE decision whether or not to exercise the option to extend the contract, and (3) in the DOE decision whether to terminate the contract for default. The final determination on the acceptability of the work performed by the Contractor under this provision and incentive fee determination shall be made solely by the HCA.

(h) Superstretch Incentives

To challenge the Contractor to accomplish significant, mission critical, superstretch goals that are in the best interest of the Government, significantly accelerates outyear workscope identified in the DOE-approved baseline, and/or motivate the contractor to extraordinary performance, the following incentive provision is established:

Performance incentives addressing superstretch goals should be developed prior to the beginning of the fiscal year, but may be developed and implemented during the fiscal year on a limited basis. The fee for accomplishment of superstretch goals will be paid from a share of the cost of the accelerated work and will be outside the fee pool identified in Clause B.3. The cost identified in the BCR will include fee at the rate of up to 20 percent of the revised estimated BCWS of the accelerated workscope. When the Contractor has determined that funds are available to accelerate work, the Contractor

shall coordinate with Office of River Protection's (ORP) Cognizant Contracting Officer's Representative to identify acceptable superstretch targets. When agreed upon, a Baseline Change Request (BCR) shall be prepared documenting the scope, cost and schedule changes necessary to incorporate the accelerated workscope into the baseline. A copy of the incentive shall be attached to the BCR.

The BCR will be processed through the LMHC and ORP Change Control Boards. Upon approval of the BCR and approval of the Performance Incentive by the Contracting Officer or HCA, the accelerated work will be performed. When the work is complete, a package documenting completion of the work will be prepared and submitted to DOE for approval. Approval of the completion package by DOE will authorize payment to the contractor of the fee earned. To earn fee associated with a superstretch incentive, the workscope associated with the superstretch incentive must be completed in the fiscal year that the savings were realized.

The superstretch performance incentives must be performed in accordance with the cost and schedule criteria identified in the performance incentive. The cost savings must be realized through efficiencies and/or workscope deletions and not deferrals.

Fee payments from accomplishment of superstretch goals will be separate from and not subject to or impact the provisional payment of fee limitations described in Clause H.30.

H.19 SEGREGATION OF COSTS

(a) Whenever the contract contains both fixed-price and cost-type efforts or task orders, the Contractor shall maintain separate accounts for each cost objective to properly report all direct and indirect costs in accordance with other requirements of the contract.

(b) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by CLIN, task order, or other suitable accounting procedure of all incurred segregable costs of work allocable to the work effort directly related to the incentive.

(c) If the Contractor has initiated work pursuant to a contract cost savings program clause, if included in this contract, regardless of whether or not a proposal has been accepted, the Contractor, for each cost savings incentive effort/proposal, shall maintain separate accounts, by CLIN, task order or other suitable accounting procedure, of all incurred segregable costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Savings Proposal.

H.20 AVAILABLE FEE

(a).Fee Pool Allocation. It is DOE's intention that the total available fee under this contract and the Fluor Daniel Hanford, Inc. prime contract with DOE will be no greater than it otherwise would have been if the two contracts had remained a single contract. The combined total available fee pool will be no more than the maximum fee permitted under DEAR 970.15404-4 and 915.404-4. The Government may also create "superstretch" incentives that would allow the contractor to earn additional fee that would be outside the fee pool. The fee structure shall be set forth in the contract for the period October 1, 1999 through September 30, 2000. For each fiscal year thereafter, the Contracting Officer shall allocate the total available fee pool applicable to this contract as set forth in Section B.3(c), for that fiscal year across the fee structure in accordance with the following:

<u>Fee/Incentive</u>	<u>Percentage</u>
Base Fee	0%
Award Fee	0%
Performance Fee	<u>100%</u>
Total Available Fee Pool	100%

The allocation shall be documented in the annual update to the Fee Plan contained in Section J, Appendix H.

(b).Fee Pool Adjustment. However, if the estimated cost for that fiscal year, set forth in Section B.3(c) differs significantly from the estimated cost being set for that fiscal year following passage of the budget, the corresponding total available fee pool for that fiscal year may be increased or decreased unilaterally by the Contracting Officer. The aforementioned unilateral increase or decrease will be determined as follows:

The fiscal year total available fee pool of Section B3(c) will be multiplied by the following:

$$\frac{\text{Estimated Cost Determined from Budget}}{\text{Estimated Cost for Fiscal Year in Section B}}$$

The estimated cost, total available fee pool and the contract fee structure, as it may be determined from the formulas above, for the new fiscal year shall be set forth in a modification unilaterally executed by the Contracting Officer. The amount of the total available fee pool or fiscal year allocation of the available fee across the fee structure hereunder shall not be subject to the contract clause entitled "Disputes - Alternate I."

If, at any time, the Contracting Officer determines that the amount of fee or fee structure is not commensurate with the scope of work or risk under the contract, the Contracting Officer may unilaterally decide, not subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), to enter into negotiations with the Contractor to determine a revision to the total available fee pool or fee structure.

H.21 DETERMINATION OF FEE

The parties to this contract agree that the fee arrangement(s) under this contract including incentive types (cost, schedule and performance), number of performance expectations that are fee-bearing, the amount of available fee, the method for determining fees earned, and the method of payment of fees are applicable to the existing work scope for the current fiscal year only (unless otherwise specifically stated). At a reasonable time prior to the Contracting Officer's unilateral establishment of the annual fee structure, the Government will examine the benefits received, if any, from the existing fee arrangements and the mechanisms for implementation for effectiveness and ease of administration. The Government shall unilaterally determine if any or all of the fees should continue at all, in part, or in the present form. At that time the Contracting Officer may enter into discussions with the Contractor to determine new or changed fee arrangements.

H.22 COST SAVINGS PROGRAM EXCLUSION FROM OTHER FEES

The Contractor's share of any net cost savings that might be rewarded as a result of any Cost Savings Program that may be implemented under this contract shall be paid only if it is rewardable or fee bearing under other clauses of this contract.

H.23 SHARING EARNED FEES WITH EMPLOYEES

The Contractor will establish an employee fee-sharing program under this contract. The Contractor shall set aside five (5) percent of its earned fee to be shared with its employees. The fee sharing process and percentage of earned fee to be shared will be described in its procedures.

H.24 FRINGE BENEFIT CEILING

For employees of the Contractor who receive corporate fringe benefits, the allowable costs of employee burdens and benefits will not exceed 38.13% as adjusted for changes in statutory payroll tax and insurance requirements.

H.25 INDIRECT COST ALLOCATIONS

For the base contract period and any extension thereof, corporate home office costs/allocations may be allowable only when a directly causal and/or beneficial relationship to the DOE program is demonstrated and approved by the Contracting Officer.

H.26 DOE AL-04R LOBBYING RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.27 DOE AL-04R LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999)

The Contractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.28 CLASSIFIED INVENTIONS - SPECIAL

The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the contract or contracts that require security classification markings to be placed on the application.

The substance of this clause shall be included in subcontracts that cover or are likely to cover classified subject matter.

H.29 CONTRACTOR QA REQUIREMENTS

The Contractor shall develop and implement a company specific Quality Assurance Program (QAP), supported by documentation that describes its overall implementation of Quality Assurance (QA) requirements. The documentation shall identify the procedures, instructions, and manuals that will be used to implement the Contractor's QA Program within the Contractor's scope of work. The Contractor's documentation shall be submitted to the DOE Office of River Protection (ORP) for review and approval within 180 days of contract execution.

The Contractor shall utilize a technically defensible "graded approach" to develop the Contractor's QA Program, based on the requirements of Title 10, CFR, Part 830.120 (10 CFR 830.120) for all nuclear facilities and projects within the scope of that document and the Contractor's scope of work, based on DOE Order O 414.1A, "Quality Assurance," requirements for facilities and projects not within the scope of 10 CFR 830.120, and

based on the requirements of the Office of Civilian Radioactive Waste Management's (OCRWM) Quality Assurance Requirements and Description (QARD), DOE/RW-0333P, for those elements of the Contractor's scope of work that involve the interim storage, and on-site transportation of Immobilized High Level Waste. The Contractor shall determine within 180 days of contract execution, and subject to ORP approval, if a Sampling and Analytical QA standard is applicable that the Contractor shall use at the waste feed interface between the Contractor and the immobilization contractor.

EH-10, OCRWM, and ORP, or its designees, shall have access to, and the right to conduct, assessments of the Contractor (and any subtier contractor) activities for compliance to the appropriate parts of the Contractor's QA Program at the discretion of ORP.

H.30 PROVISIONAL PAYMENT OF FEE

(a) Definition: For purposes of this clause, the word "fee" shall mean performance fee, award fee, base fee, or cost savings share.

(b) If interim payments of fee are paid before the final determination of fee, those payments shall be provisional pending that final determination. Such provisional payments may be made at the discretion of the Contracting Officer on a monthly basis up to a maximum amount for the fiscal year not-to-exceed 70 percent of the total available performance fee.

(c) The Department of Energy (DOE) agrees to pay to the Contractor, at the discretion of the Contracting Officer, on a provisional basis an amount up to 10% of the annual available performance fee in each of the first two calendar months of each fiscal year and 5% in each calendar month thereafter up to a maximum payment of 70% of the available performance fee. The Contractor shall submit to the Contracting Officer at the beginning of each month the provisional fee for that month. DOE agrees to authorize payment of the provisional fee no later than the 10th working day of the following month.

(d) The final fee determination will be made by the Contracting Officer or the Head of the Contracting Activity, as appropriate, in accordance with the fee clauses of this contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to DOE upon demand; payable with interest in accordance with the contract clause entitled "Interest."

H.31. PREEXISTING CONDITIONS

(a) The DOE agrees to reimburse, and the Contractor shall not be held responsible, for any liability, including without limitation, a claim involving strict or absolute liability, and any civil fine or penalty, expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act that occurred before the Contractor assumed responsibility on October 1, 1996. To the extent the acts or omissions of the Contractor cause or add to any liability, expense, or remediation cost resulting from conditions in existence prior to October 1, 1996, the Contractor shall be responsible in accordance with the terms and conditions of the contract.

(b) The Contractor has the duty to inspect and identify the facilities and sites and identify as required herein, those conditions that could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by DOE and as required elsewhere in this contract.

(c) The Contractor shall identify to DOE in a timely manner, but in no case greater than twenty (20) days after discovery, newly discovered preexisting conditions such as those described in paragraph (b) above. The Contractor has the responsibility to take corrective actions, as directed by DOE and required elsewhere in this contract.

(d) The obligations of the DOE under this provision are subject only to the availability of funds.

(e). For purposes of this clause, the DOE shall recognize the Contractor's performance under its subcontract with Fluor Daniel Hanford, Inc. (FDH) for the performance of work on the TWRS project between October 1, 1996 and September 30, 1999, and shall address any matters directly with the Contractor.

H.32 USE OF DOE FACILITIES

(a). Work for Other Government Agencies

(1) DOE may authorize the Contractor to perform non-DOE funded work involving the use of DOE facilities and resources, including Contractor staff, provided that the work is consistent with applicable laws and regulations and satisfies DOE policies regarding mission compatibility and competition with the private and public sectors.

(2) When a work request is submitted by a sponsoring, non-DOE entity, the Contractor shall, when requested by DOE:

(i) review the work statement for mission compatibility so as to ensure that the work is consistent with and complementary to the mission of the contract and the facility, will not adversely affect assigned programs, and will not unduly burden mission resources;

(ii) advise the Contracting Officer if the Contractor is aware that performance of the work would result in direct competition with capabilities available in the private or public sectors;

(iii) develop a cost estimate for the work to be performed and describe the DOE equipment, facilities, and Contractor staff required to complete the effort; and

(iv) upon receipt of DOE authorization, perform the requested work in accordance with instructions provided by the Contracting Officer.

(3) The performance of non-DOE funded work shall be subject to the provisions of this contract and to other applicable rules, regulations, and policies as may be specifically directed to the Contractor's attention by the Contracting Officer.

(b). Work for Non-Government Entities

The Contractor may also propose the use of Government-owned facilities, equipment and other property on a non-interference basis for private work and private work for other entities. The Contractor agrees to reimburse DOE for such use on a full-cost recovery basis at rates approved by the Contracting Officer.

(c).Local Community Assistance

The Contractor may conduct programs of local community assistance to mitigate adverse impacts of closure or reconfiguration of DOE facilities. Such programs may provide for the lease or transfer of DOE property at less than fair market value in accordance with the Hall Amendment (Public Law 103-160, Sections 3154 and 3155). Any lease or transfer of DOE property under this program must be prior-approved in writing by the Contracting Officer.

H.33 WORK FOR OTHERS FUNDING AUTHORIZATION

The Contractor is permitted to provide advanced payment using Contractor funds for reimbursable work to be performed by the Contractor for non-Federal entities in instances where advanced payment from that entity is required pursuant to DOE policy and such an advance cannot be obtained by DOE. The Contractor is also permitted to provide advanced continuation funding using Contractor funds for Federal entities when the term or the funds on a Federal interagency agreement have elapsed. Any uncollectible receivables resulting from the Contractor using its own funding shall be the responsibility of the Contractor, and the United States Government shall not have any liability to the Contractor therefor.

H.34 CONTRACTOR INSURANCE

(a) Contractor shall procure and maintain, at no cost to DOE, the insurance policies and coverage limits described below unless waived in writing by DOE. Contractor shall ensure that its subcontractors provide evidence of insurance policies and coverage limits equal to or exceeding that required of Contractor to DOE, unless waived in writing by DOE, before its subcontractors perform work on the Project Site. Any waiver of insurance by DOE required in this paragraph shall not apply to insurance required by statute.

(1) Commercial General Liability Insurance, including Employers Liability and Owner's and Contractor's Protective and Contractual Liability, with a combined single limit of at least \$5,000,000 per occurrence for bodily injury (including death), property damage, and any other covered laws.

(2) Automobile Liability Insurance for all motor vehicles, including owned, non-owned, and hired motor vehicles used by or on behalf of the Contractor in connection with the work to be performed under this contract with a combined single limit of at least \$5,000,000 per occurrence for bodily injury (including death), property damage, and any other covered loss. If hazardous materials are to be transported, the Contractor shall maintain liability insurance evidenced by ISO Form CA001 with MCS-90 and CA9948 endorsements attached.

(3) Tool and Equipment Insurance for all Contractor provided tools and equipment, including rentals, used in connection with the work to be performed under this contract. Contractor shall furnish DOE with satisfactory evidence of this required insurance unless waived in writing by DOE prior to commencing work under this contract with the provision that at least thirty (30) days prior written notice be given to DOE in the event of cancellation or material change. In addition, the following requirements apply to Contractor Provided Insurance: (i) coverages provided shall be primary; (ii) policies shall contain a Separation of Insureds clause; (iii) Contractor shall name DOE additional insured on all applicable policies of insurance; and (iv) the Contractor's insurers shall waive all subrogation rights against DOE. Any deductible associated with the Contractor Provided Insurance is the responsibility of the Contractor.

DOE shall have no obligation to reimburse any expenditures, costs, or other liabilities paid for the Contractor provided insurance that would otherwise be reimbursable under contract clause "Insurance - Litigation and Claims," or other relevant clause of this contract.

Notwithstanding any other provision in this contract, except as expressly prohibited by statute, DOE shall release, hold harmless, and indemnify the Contractor for any liabilities arising out of or in connection with the work under the contract when such liabilities exceed those covered by the Contractor provided insurance, as specified above, provided that such liabilities and related costs are otherwise reasonable, allowable, and allocable in

accordance with Federal allowable cost principles. Provided, the Contractor shall not be reimbursed or otherwise held harmless for liabilities that are caused by willful misconduct or lack of good faith by the managerial personnel of the Contractor. DOE's liability under this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet any deficiencies. DOE shall, however, use best efforts to fund any such obligation under this clause should it arise.

H.35 ASSIGNMENT OF DOE PRIME CONTRACTS

During the period of performance of this contract it may become necessary for the DOE to transfer and assign to this contract (and Contractor agrees to accept) existing or future DOE prime contracts supporting River Protection Project work. The transfer of these prime contracts will be for administration purposes and in effect the transferred contracts will become subcontracts to this contract. Details of the transfer will be determined by the DOE prior to the transfer. Any recommendations and/or suggestions on individual transfers should be submitted in writing to the Contracting Officer prior to the transfer or assignment.

H.36 EARNED VALUE MANAGEMENT SYSTEM

- (a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that is recognized as meeting the best business practice guidelines provided in ANSI/EIA-748 Standard, Earned Value Management System.
- (b) The Contractor shall apply the system to the contract and shall be prepared to demonstrate to the Contracting Officer that the EVMS meets the guideline referenced in paragraph (a) of this clause.
- (c) The Contracting Officer may require integrated baseline reviews. The objective of the integrated baseline review is for DOE and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. The Contractor is responsible for evaluation of its system. This includes self-evaluation of the system, conformity with the standard, and notification to the Contracting Officer of any significant system changes.
- (d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized Contracting Officer's Representative (COR). Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.
- (e) The Contractor shall include a clause similar to this in appropriate subcontracts.

LOCKHEED MARTIN HANFORD CORPORATION
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I.1 952.202-1 Definitions (Oct 1995)

- (a) "Head of the agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means--
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
 - (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means--
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term *DOE* means the Department of Energy and *FERC* means the Federal Energy Regulatory Commission.

(End of clause)

I.2 52.203-3 Gratuities (Apr 1984)

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
 - (1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

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

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence. "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to

time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence. "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract. "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

I.4 52.203-6 Restrictions on Subcontractor Sales to the Government (Jul 1995)

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

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

- (a) *Definitions.*

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

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

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

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

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

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

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

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

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from--
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

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

(End of clause)

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

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--
- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which--
- (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--
- (A) Exchanging the information covered by such subsections for anything of value; or
- (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
- (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

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

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) For cost-plus-award-fee contracts--
 - i) The base fee established in the contract at the time of contract award;
 - ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may--
 - i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

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

(End of clause)

I.8 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jun 1997)

- (a) *Definitions.*

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2. "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

- (b) *Prohibitions.* (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
- (i) *Agency and legislative liaison by own employees.*
 - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
 - (ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

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

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

- (c) *Disclosure.* (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
- (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.
- (e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

- (f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

I.9 52.204-4 Printing/Copying Double-Sided on Recycled Paper. (June 1996)

- (a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.
- (b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

(End of clause)

I.10 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Jul 1995)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

I.11 52.215-8 Order of Precedence--Uniform Contract Format. (Oct 1997)

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

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)

I.12 52.215-11 Price Reduction for Defective Cost or Pricing Data-- Modifications. (Oct 1997)

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced

- accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
- (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if--
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

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

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

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

- (a) The requirements of paragraphs (b) and (c) of this clause shall--
 - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
 - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (c) The Contractor shall require the subcontractor to certify in substantially the form rescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

I.14 52.215-14 Integrity of Unit Prices (Oct 1997)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.
- (c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(End of clause)

I.15 52.215-15 Pension Adjustments and Asset Reversions. (Dec 1998)

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.
- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

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

I.16 52.215-17 Waiver of Facilities Capital Cost of Money. (Oct 1997)

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

I.17 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions. (Oct 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).
(End of clause)

I.18 52.215-19 Notification of Ownership Changes. (Oct 1997)

- (a) The Contractor shall make the following notifications in writing:
- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall--
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;

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

I.19 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications. (Oct 1997)

- (a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--
- (i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If--
 - (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
 - (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
- (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
- (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.
- (b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
- (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.
- (End of clause)

I.20 52.216-10 Incentive Fee. (Mar 1997)

- (a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.
- (b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.
- (1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

- (2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.
- (d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.
- (e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by _____ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ [*Contracting Officer insert percentage*] percent or less than _____ [*Contracting Officer insert percentage*] percent of the target cost.
- (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of--
- (i) Payments made under assignments; or

- (ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.
- (3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.
- (4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of--
 - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
 - (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - (iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;
 - v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or
 - (vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.
- (5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.
- (f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.
- (g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)

I.21 52.219-8 Utilization of Small Business Concerns. (June 1999)

- (a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) *Definitions.* As used in this contract--
 - (1) "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
 - (2) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
 - (3) "Small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern that represents, as part of its offer, that it meets the definition of a small disadvantaged business concern in 13 CFR 124.1002.
 - (4) "Small business concern owned and controlled by women" means a small business concern--
 - (i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women. (End of clause)

I.22 52.219-9 Small Business Subcontracting Plan (Jan 1999) . Alternate II (Jan 1999)

- (a) This clause does not apply to small business concerns.
- (b) *Definitions.* As used in this clause--
 - "Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.
 - "Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).
 - "Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.
 - "Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.
 - "Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract
- (d) The offeror's subcontracting plan shall include the following:
 - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

- (2) A statement of--
 - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns;
 - (iii) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (iv) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
 - (v) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--
 - (i) Small business concerns;
 - (ii) HUBZone small business concerns;
 - (iii) Small disadvantaged business concerns; and
 - (iv) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the list of certified small disadvantaged business concerns of the SBA, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small and women-owned small business source list. A firm shall rely on the information contained in SBA's list of small disadvantaged business concerns as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small disadvantaged business source list. Use of PRO-Net and/or the SBA list of small disadvantaged business concerns as its source lists does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with--
 - (i) Small business concerns;
 - (ii) HUBZone small business concerns;

- (iii) Small disadvantaged business concerns; and
 - (iv) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will--
- (i) Cooperate in any studies or surveys as may be required;
 - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and
 - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (*e.g.*, PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether HUBZone small business concerns were solicited and, if not, why not;

- (C) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (D) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (E) If applicable, the reason award was not made to a small business concern.
 - (iv) Records of any outreach efforts to contact--
 - (A) Trade associations;
 - (B) Business development organizations; and
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
 - (v) Records of internal guidance and encouragement provided to buyers through--
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
 - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--
 - (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with--
 - (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (j) The Contractor shall submit the following reports:
 - (1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
 - (2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

(End of clause)

I.23 52.219-16 Liquidated Damages--Subcontracting Plan. (Jan 1999)

- (a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

I.24 52.222-1 Notice to the Government of Labor Disputes. (Feb 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

I.25 52.222-3 Convict Labor. (Aug 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a)
 - (1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

I.26 52.222-4 Contract Work Hours and Safety Standards Act--Overtime Compensation. (Jul 1995)

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) *Payrolls and basic records.* (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

- (e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

**I.27 52.222-17 Labor Standards for Construction Work--Facilities Contracts.
(Feb 1988)**

- (a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:
- (1) Contract Work Hours and Safety Standards Act--Overtime Compensation at 52.222-4.
 - (2) Davis-Bacon Act at 52.222-6.
 - (3) Withholding of Funds at 52.222-7.
 - (4) Payrolls and Basic Records at 52.222-8.
 - (5) Apprentices and Trainees at 52.222-9.
 - (6) Compliance with Copeland Act Requirements at 52.222-10.
 - (7) Subcontracts (Labor Standards) at 52.222-11.
 - (8) Contract Termination--Debarment at 52.222-12.
 - (9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.
 - (10) Disputes Concerning Labor Standards at 52.222-14.
 - (11) Certification of Eligibility at 52.222-15.
- (b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.
- (c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

I.28 52.222-21 Prohibition of Segregated Facilities. (Feb 1999)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.
(End of clause)

I.29 52.222-26 Equal Opportunity. (Feb 1999)

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to--

- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 - (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
 - (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
 - (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.
(End of clause)

I.30 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era. (Apr 1998)

- (a) *Definitions.* As used in this clause--
- "All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.
- "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.
- "Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established

"recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

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

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
 - (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.
- (b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--
- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) *Listing openings.* (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
 - (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any

particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (e) *Postings.* (1) The Contractor agrees to post employment notices stating--
(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and
(ii) The rights of applicants and employees.
(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

I.31 52.222-36 Affirmative Action for Workers with Disabilities. (Jun 1998)

- (a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
- (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) *Postings.* (1) The Contractor agrees to post employment notices stating--
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.
- (End of clause)

I.32 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era. (Jan 1999)

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--
- (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and
- (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
- (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
- (2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

I.33 52.222-41 Service Contract Act of 1965, as Amended. (May 1989)

- (a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).
"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."
"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.
- (b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.
- (c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level

of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage

determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

- (d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the

predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

- (i). *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
- (i) For each employee subject to the Act--
 - (A) Name and address and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.
 - (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
- (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
 - (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or

subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

- (l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
 - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the

applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

I.34 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

(End of clause)

I.35 52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA). (May1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offers shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor Fluor Daniel Hanford, Inc. and the HAMTC (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

I.36 52.223-2 Clean Air and Water. (Apr 1984)

- (a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, *et seq.*).
"Clean air standards," as used in this clause, means--
- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
 - (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
 - (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
 - (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with--

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, *et seq.*).

(b) The Contractor agrees--

- (1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

**I.37 52.223-3 Hazardous Material Identification and Material Safety Data.
(Jan 1997) Alternate I (July 1995).**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material

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

_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--
- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

(End of clause)

I.38 52.223-5 Pollution Prevention and Right-to-Know Information. (Apr 1998)

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

(End of clause)

I.39 52.223-12 Refrigeration Equipment and Air Conditioners. (May 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

I.40 52.223-14 Toxic Chemical Release Reporting. (Oct 1996)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--
 - (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or
 - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

- (1) The Contractor shall notify the Contracting Officer; and
- (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall--
 - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--
 - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).
(End of clause)

I.41 52.224-1 Privacy Act Notification. (Apr 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

I.42 52.224-2 Privacy Act. (Apr 1984)

- (a) The Contractor agrees to--
 - (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--
 - (i) The systems of records; and
 - (ii) The design, development, or operation work that the contractor is to perform;

- (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
 - (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.
- (b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
- (c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

I.43 52.225-11 Restrictions on Certain Foreign Purchases. (Aug 1998)

- (a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.

- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
- (c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

I.44 52.227-1 Authorization and Consent. (Jul 1995)

- (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

I.45 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (Aug 1996)

- (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer,

all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

- (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

(End of clause)

I.46 52.227-3 Patent Indemnity. (Apr 1984) *Alternate II (Apr 1984)*

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to--
- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
 - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.
- (c) This patent indemnification shall cover the following items:

[List and/or identify the items to be included under this indemnity.]

(End of clause)

I.47 52.230-2 Cost Accounting Standards. (Apr 1998)

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall--
- (1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
 - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
 - (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
 - (4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

- (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
- (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.
- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

I.48 52.230-6 Administration of Cost Accounting Standards. (Apr 1996)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (*i.e.*, firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (*i.e.*, Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
 - (1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):
 - (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - (ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to

paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

- (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards--Educational Institution, which have an award date before the effective date of that standard or cost principle.
 - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards--Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.
- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--
- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

- (2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:
- (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
 - (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
- (g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

I.49 52.232-9 Limitation on Withholding of Payments. (Apr 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to--

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

I.50 52.232-17 Interest. (Jun 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

I.51 52.232-25 Prompt Payment. (Jun 1997)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

- (a) *Invoice payments--(1) Due date.* (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events: (A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause). (B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
- (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
- (2) *Certain food products and other payments.* (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are-- (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery. (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery. (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract. (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
- (ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

- (3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.
- (i) Name and address of the Contractor.
 - (ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)
 - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
 - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
 - (viii) Any other information or documentation required by the contract (such as evidence of shipment).
 - (ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.
- (4) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.
- (i) A proper invoice was received by the designated billing office.
 - (ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (*e.g.*, tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the *Federal Register* semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty: (A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils). (B) The period between the defects notice and resubmission of the corrected invoice by the Contractor. (C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) *Prompt payment discounts.* An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) *Additional interest penalty.* (i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor-- (A) Is owed an interest penalty of \$1 or more; (B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and (C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1. (B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause. (C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein. (D) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.*, payments under utility contracts subject to tariffs and regulation).

- (b) *Contract financing payments--*(1) *Due dates for recurring financing payments.* If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [*insert day as prescribed by Agency head; if not prescribed, insert 30th day*] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.
- (2) *Due dates for other contract financing.* For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.
- (3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.
- (c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

I.52 52.233-1 Disputes. (Dec 1998) Alternate I (Dec 1991)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(End of clause)

I.53 52.233-3 Protest after Award. (Aug 1996) Alternate I (Jun 1985).

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) f, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

I.54 52.237-2 Protection of Government Buildings, Equipment, and Vegetation. (Apr 1984)

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

(End of clause)

I.55 52.237-3 Continuity of Services. (Jan 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to--
 - (1) Furnish phase-in training; and
 - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

I.56 52.242-1 Notice of Intent to Disallow Costs. (Apr 1984)

- (a) Notwithstanding any other clause of this contract--
 - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

- (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.
(End of clause)

I.57 52.242-3 Penalties for Unallowable Costs. (Oct 1995)

- (a) *Definition.* "Proposal," as used in this clause, means either--
 - (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which--
 - (i) Relates to any payment made on the basis of billing rates; or
 - (ii) Will be used in negotiating the final contract price; or
 - (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to--
 - (1) The amount of the disallowed cost allocated to this contract; plus
 - (2) Simple interest, to be computed--
 - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
 - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

I.58 52.242-4 Certification of Final Indirect Costs. (Jan 1997)

- (a) The Contractor shall--
 - (1) Certify any proposal to establish or modify final indirect cost rates;
 - (2) Use the format in paragraph (c) of this clause to certify; and
 - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

- 1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
- 2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: _____
Signature: _____
Name of Certifying Official: _____
Title: _____
Date of Execution: _____

(End of clause)

I.59 52.242-13 Bankruptcy. (Jul 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

I.60 52.242-15 Stop-Work Order. (Aug 1989) Alternate I (Apr 1984).

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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

I.61 52.244-5 Competition in Subcontracting. (Dec 1996)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.
(End of clause)

I.62 52.244-6 Subcontracts for Commercial Items and Commercial Components. (Oct 1998)

- (a) *Definitions.*
"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.
"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
 - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
(End of clause)

I.63 52.246-3 Inspection of Supplies--Cost-Reimbursement. (Apr 1984)

- (a) *Definitions.*
"Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--
- (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operation at a plant or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with performing this contract.
- "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

- (f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may--
 - (i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;
 - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
 - (iii) Terminate the contract for default.(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to--
 - (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- (j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.
- (k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

I.64 52.246-5 Inspection of Services--Cost-Reimbursement. (Apr 1984)

- (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may--
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may--
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
 - (2) Terminate the contract for default.

(End of clause)

I.65 52.246-25 Limitation of Liability--Services. (Feb 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that--
 - (1) Occurs after Government acceptance of services performed under this contract; and

- (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--
- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

I.66 52.247-1 Commercial Bill of Lading Notations. (Apr 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignee, the annotation shall be: Transportation is for the _____ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.
- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be: Transportation is for the _____ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. _____ . This may be confirmed by contacting _____ [*Name and address of the contract administration office listed in the contract*].

(End of clause)

I.67 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit. (Jun 1997)

- (a) (1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid--
 - (i) By the Contractor under a cost-reimbursement contract; and
 - (ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
 - (2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA 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.
 - (b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:
General Services Administration
Attn: FWA
1800 F Street, NW
Washington, DC 20405.
- The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.
- (c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.
 - (d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show--

- (1) The name and address of the Contractor;
- (2) The contract number including any alpha-numeric prefix identifying the contracting office;
- (3) The name and address of the contracting office;
- (4) The total number of bills submitted with the statement; and
- (5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

(End of clause)

I.68 52.249-6 Termination (Cost-Reimbursement). (Sep 1996)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--
 - (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government--
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

- (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.
 - (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
 - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor--
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

I.69 52.249-14 Excusable Delays. (Apr 1984)

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--
- (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

I.70 52.251-1 Government Supply Sources. (Apr 1984) Alternate I (Apr 1984).

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property."

(End of clause)

I.71 52.251-2 Interagency Fleet Management System Vehicles and Related Services. (Jan 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

I.72 52.252-2 Clauses Incorporated by Reference. (Feb 1998)

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

[Insert one or more Internet addresses]

(End of clause)

I.73 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 _____. [*insert regulation name*] (48 CFR _____) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.
(End of clause)

I.74 52.253-1 Computer Generated Forms. (Jan 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.
(End of clause)

I.75 952.204-2 Security (Sep 1997)

- (a) *Responsibility.* It is the Subcontractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Subcontractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Subcontractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this contract.

If retention by the Subcontractor of any classified matter is required after the completion or termination of the contract, the Subcontractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) *Regulations.* The Subcontractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "*Formerly Restricted Data*" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* *SNM* means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this contract, may subject the Subcontractor, its agents, employees, or subSubcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the Contracting Officer, the Subcontractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

I.76 952.204-70 Classification/Declassification (Sep 1997)

In the performance of work under this contract, the Subcontractor or subSubcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Subcontractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers. The Subcontractor or subSubcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Subcontractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Subcontractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Subcontractor or subSubcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier. In addition, the Subcontractor or subSubcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Subcontractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to

the Subcontractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Subcontractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.77 DEAR 952.204-74 Foreign Ownership, Control, or Influence Over Subcontractor (Deviation)

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" shall mean DOE Contracting Officer. When this clause is included in a subcontract, the term "Subcontractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (b) The Subcontractor shall immediately provide the Contracting Officer written notice of any changes in the extent and nature of FOCI over the Subcontractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
- (c) In those cases where a Subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (d) If the Contracting Officer at any time determines that the Subcontractor is, or is potentially, subject to FOCI, the Subcontractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (e) The Subcontractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the Subcontractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded

until the Subcontractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.

- (f) Information submitted by the Subcontractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.78 952.208-7 Tagging of Leased Vehicles (Apr 1984)

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Subcontractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.79 952.208-70 Printing (Apr 1984)

The Subcontractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

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

I.80 952.209-72 Organizational Conflicts of Interest (Jun 1997) Alternate I

- (a) *Purpose.* The purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) *Scope.* The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime Subcontractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
 - (1) *Use of Subcontractor's Work Product.* (i) The Subcontractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Subcontractor's performance of work under this contract for a period of (Contracting Officer see DEAR 9.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Subcontractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts for advisory and assistance services.

- (ii) If, under this contract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
 - (iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to the Government.
 - (2) Access to and use of information. (i) If the Subcontractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the Contracting Officer it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
 - (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Subcontractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) *Disclosure after award.* (1) The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description

of any action which the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

- (2) In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) *Waiver.* Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) *Subcontracts.* (1) The Subcontractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "Subcontractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
- (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Subcontractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Subcontractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Subcontractor. If the conflict cannot be avoided or neutralized, the Subcontractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.81 952.217-70 Acquisition of Real Property (Apr 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Subcontractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the Subcontractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.82 952.226-74 Displaced Employee Hiring Preference (Jun 1997)

- (a) Definition.
Eligible employee means a current or former employee of a Subcontractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Subcontractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its Subcontractors with respect to work under its contract with the Department at the time the particular position is available.
- (b) Consistent with Department of Energy guidance for Subcontractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.83 952.227-9 Refund of Royalties (Feb 1995)

- (a) The contract price includes certain amounts for royalties payable by the Subcontractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.
- (c) The Subcontractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Subcontractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Subcontractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.
- (e) If, at any time within 3 years after final payment under this contract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Subcontractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I.84 952.227-13 Patent Rights Acquisition by the Government (Sep 1997)

(a) Definitions.

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

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

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

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

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

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

(b) Allocations of principal rights.

(1) Assignment to the Government. The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Subcontractor under subparagraph (b)(2) and paragraph (d) of this clause. (2) Greater rights determinations. (i) The Subcontractor, or an employee-inventor after consultation with the Subcontractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Subcontractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Subcontractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

- (ii) Within two (2) months after the filing of a patent application, the Subcontractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Subcontractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
 - (iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
 - (iv) Upon request, the Subcontractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.
- (c) Minimum rights acquired by the Government. (1) With respect to each subject invention to which the Department of Energy grants the Subcontractor principal or exclusive rights, the Subcontractor agrees as follows:
- (i) The Subcontractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
 - (ii) The Subcontractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Subcontractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that-- (A) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
 - (iii) The Subcontractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as

DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Subcontractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Subcontractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Subcontractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

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

DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license. (4) The Subcontractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

- (v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
- (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
- (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.
- (vi) If the Subcontractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.
- (vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Subcontractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.
- (e) Invention identification, disclosures, and reports. (1) The Subcontractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Subcontractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

- (2) The Subcontractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters or, if earlier, within 6 months after the Subcontractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Subcontractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Subcontractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Subcontractor contends in writing at the time the invention is disclosed that it was not so made.
- (3) The Subcontractor shall furnish the Contracting Officer the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.
 - (ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.
- (4) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under contract in order that the Subcontractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the

subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause. (5) The Subcontractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

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

- (3) Final payment under this contract shall not be made before the Subcontractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.
 - (4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.
- (h) Subcontracts.
- (1) The Subcontractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Subcontractor shall include this clause (suitably modified to identify the parties). The Subcontractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subSubcontractor's subject inventions.
 - (2) In the event of a refusal by a prospective subSubcontractor to accept such a clause the Subcontractor--
 - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subSubcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.
 - (3) In the case of subcontracts at any tier, DOE, the subSubcontractor, and Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subSubcontractor and DOE with respect to those matters covered by this clause.
 - (4) The Subcontractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subSubcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Subcontractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

- (5) The Subcontractor shall identify all subject inventions of the subSubcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the Contracting Officer, promptly upon identification of the inventions.
- (i) Preference United States industry. Unless provided otherwise, no subcontractor that receives title to any subject invention and no assignee of any such subcontractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the subcontractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) Atomic energy.
- (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
- (2) Except as otherwise authorized in writing by the Contracting Officer, the Subcontractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (k) Background Patents.
- (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Subcontractor at any time through the completion of this contract:
- (i) Which the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.
- (2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only. (3) The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive rights are necessary to achieve expeditious commercial

development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Subcontractor. (4) Notwithstanding subparagraph (k)(3) of this clause, the Subcontractor shall not be obligated to license any background patent if the Subcontractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

- (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
- (ii) the Subcontractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter. 1) Publication. It is recognized that during the course of the work under this contract, the Subcontractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Subcontractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

m) Forfeiture of rights in unreported subject inventions.

- (1) The Subcontractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Subcontractor fails to report to Patent Counsel within six months after the time the Subcontractor:
 - (i) Files or causes to be filed a United States or foreign patent application thereon; or
 - (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.
- (2) However, the Subcontractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Subcontractor:
 - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or
 - (ii) Contending that the invention is not a subject invention, the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or
 - (iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.

- (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

I.85 952.247-70 Foreign Travel (Feb 1997)

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

I.86 952.250-70 Nuclear Hazards Indemnity Agreement (JUN 1996)

- (a) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial protection.* Except as hereafter permitted or required in writing by DOE, the Subcontractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Subcontractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Subcontractor by DOE.
- (d) (1) *Indemnification.* To the extent that the Subcontractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Subcontractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Subcontractor and other persons indemnified as are approved by DOE, provided that DOE's liability,

including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Subcontractor or a subSubcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 - 1. Negligence;
 - 2. Contributory negligence;
 - 3. Assumption of risk; or
 - 4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or

defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any subcontractor-owned or controlled facility, installation, or site at which the Subcontractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims.* The Subcontractor shall give immediate written notice to DOE of any known action or claim filed or made against the Subcontractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Subcontractor shall furnish promptly to DOE, copies of

- all pertinent papers received by the Subcontractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Subcontractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Subcontractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Subcontractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Subcontractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Subcontractor, or by the completion, termination or expiration of this contract.
 - (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Audit and Records.Negotiation, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
 - (i) *Civil penalties.* The Subcontractor and its subSubcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
 - (j) *Criminal penalties.* Any individual director, officer, or employee of the Subcontractor or of its subSubcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
 - (k) *Inclusion in subcontracts.* The Subcontractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subSubcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

I.87 952.251-70 Subcontractor Employee Travel Discounts (Jun 1995)

Consistent with contract-authorized travel requirements, Subcontractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to Subcontractor employees performing official Government contract business. Vendors providing these services may require that the Subcontractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

- (a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable Subcontractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, Contracting Officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Subcontractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Subcontractor.
- (b) *Hotels/motels.* Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable Subcontractor employees while traveling on official contract business.
- (c) *Car rentals.* The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Subcontractor employees while traveling on official contract business are listed in the FTD.
- (d) *Procedures for obtaining service.*
 - (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the Subcontractor, or to a Scheduled Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity,

- Subcontractors may obtain discount air fares through a DOE office or a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted air fares with cash or credit card.
- (2) In the case of hotel and motel accommodations, reservations may be made by the Subcontractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
- (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.
- (e) *Standard letter of identification.* Subcontractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:
FORMAT FOR GOVERNMENT SUBCONTRACTORS TO QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)
To: (*Source of ticketing, accommodations or rental*)
Subject: Official Travel of Government Subcontractor
(*Full name of traveler*), bearer of this letter, is an employee of (*company name*) which is under contract to this agency under the Government contract (*contract number*). During the period of the contract (*give dates*), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.
(*Signature, title and telephone number of the Contracting Officer*)

I.88 970.5203-3 Buy American Act (Jan 1994)

- a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.
"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.
"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall use only domestic end products, except those--
 - (1) For use outside the United States;
 - (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) For which the agency determines that domestic preference would be inconsistent with the public interest; or
 - (4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

I.89 970.5204-1 Counterintelligence (Sep 1997)

- (a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

I.90 970.5204-2 Integration of Environment, Safety, and Health Into Work Planning and Execution (Jun 1997)

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.

- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed- upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.

- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

I.91 970.5204-9 Accounts, Records, and Inspection (Jun 1996)

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
NOTE: If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215-11, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.

- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

NOTE: If the prime contract contains a "Defective Cost or Pricing Data" clause, this paragraph (g) shall be modified by adding the following:

The contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at FAR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (i) of this clause, but which contains a "defective cost or pricing data" clause.

- (h) Internal audit. The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer.
NOTE: This paragraph (h) shall be included in (a) all cost-type contracts (or subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than 2 years, and (b) any other cost-type contract (or subcontract) where deemed advisable by the Head of the Contracting Activity and when the contractor (or subcontractor) already has an established internal audit organization.
- (i) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
- (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

I.92 970.5204-11 Changes (Apr 1984)

- (a) Changes and adjustment of fee. The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an

adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

- (b) Work to continue. Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.93 970.5204-17 Political Activity Cost Prohibition (Dec 1997)

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:
 - (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
 - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
 - (3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;
 - (4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
 - (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.
 - (6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.

- (b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:
- (1) Providing Members of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual technical, or scientific nature, with respect to topics directly related to the performance of the contract proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging or meals incurred by contractor employees for the purpose of providing such information or expert advice shall also be reimbursable, provided the request for such information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.
 - (2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees shall be reimbursable, provided such costs also comply with the allowable costs provision of the contract.
 - (3) Any lobbying made unallowable under subparagraph (a)(3) above to influence State legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract if authorized by the contracting officer.
 - (4) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.
- (d) The contractor's annual certification, submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the contractor's certification that the requirements and standards of this clause have been complied with.

- (e) The contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.
- (f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when: (1) An employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (f) (1) and (2) of this clause are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.
- (g) During contract performance, the contractor should resolve, in advance, any significant questions or disagreements between the contractor and DOE concerning compliance with this clause.
- (h) In providing information or expert advice under paragraph (b)(1) and (b)(2) of this clause, the contractor shall advise the Contracting Officer in advance or as soon as practicable.

I.94 970.5204-20 Management Controls (Aug 1993)

- (a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against theft, fraud, waste, and unauthorized use; all obligations and costs that are incurred under the contract are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all revenues, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and internal controls in their areas of assigned responsibility. The contractor shall, as part of the

internal audit program required elsewhere in this contract, periodically review the management systems and internal controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the system are being accomplished and that these systems and controls are working effectively.

- (b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.95 970.5204-21 Property (Jun 1997)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.
- (c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such

property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

- (e) Protection of government property--management of high-risk property and classified materials.
 - (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
 - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
 - (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
 - (1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;
 - (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

- (ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:
- (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
- (1) Shall immediately inform the contracting officer of the occasion and extent thereof,
- (2) Shall take all reasonable steps to protect the property remaining, and
- (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
- (1) Property Management System.
- (i) The contractor shall establish, administer, and properly maintain an approved property system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting

officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

- (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
- (B) Employee personal responsibility and accountability for Government-owned property;
- (C) Full integration with the contractor's other administrative and financial systems; and
- (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

- (1) All or substantially all of the contractor's business; or
- (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
- (3) A separate and complete major industrial operation in connection with the performance of this contract; or
- (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
- (5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The contractor shall include this clause in cost reimbursable contracts.

I.96 970.5204-22 Contractor Purchasing System (Nov 1997)

- (a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204-44, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. The contractor shall manage a Self-Assessment Program and shall submit to the contracting officer a copy of Self-Assessment reports in accordance with written direction and guidance provided by the contracting officer. DOE reserves the right to review and approve the contractor's purchasing system in accordance with 48 CFR subpart 44.3, and DOE implementing policy and guidance. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.
- (b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR (DEAR) Subpart 917.74.
- (d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR (DEAR) 970.7109.
- (e) Audit of Subcontractors.
 - (1) The contractor shall provide for:
 - (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

- (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.
 - (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102-15(b).
- (f) Bonds and Insurance.
- (1) The contractor shall require performance bonds in penal amounts as set forth in FAR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR (FAR) 28.102-2(b).
 - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR (FAR) 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
 - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (DEAR) 970.5203-3 and 48 CFR (DEAR) 970.5204-3. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however,

the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.

- (h) Construction and Architect-Engineer Subcontracts.
 - (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) Prevention of Conflict of Interest.
 - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR (DEAR) 970.7105.
- (j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.
- (k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.
- (l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Procurement Executive.
- (m) Leasing of Motor Vehicles. Contractors shall comply with FAR 8.11 and 48 CFR (DEAR) 908.11.
- (n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the Make-or-Buy Plan clause of this contract and the contractor's approved make-or-buy plan.

- (o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) 908.71 and the Federal Property Management Regulations, 41 CFR 101:
 - (1) Motor vehicles--48 CFR 908.7101
 - (2) Aircraft--48 CFR 908.7102
 - (3) Security Cabinets--48 CFR 908.7106
 - (4) Alcohol--48 CFR 908.7107
 - (5) Helium--48 CFR 908.7108
 - (6) Fuels and packaged petroleum products--48 CFR 908.7109
 - (7) Coal--48 CFR 908.7110
 - (8) Arms and Ammunition--48 CFR 908.7111
 - (9) Heavy Water--48 CFR 908.7121(a)
 - (10) Precious Metals--48 CFR 908.7121(b)
 - (11) Lithium--48 CFR 908.7121(c)
 - (12) Products and services of the blind and severely handicapped--41 CFR 101-26.701
 - (13) Products made in Federal penal and correctional institutions--41 CFR 101-26.702
- (r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
 - (1) at time of original acquisition;
 - (2) when lease renewals are being considered; and
 - (3) at other times as circumstances warrant.
- (s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.
- (u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of

this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in FAR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

- (w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR Part 1017.

I-97 970.5204-23 State and Local Taxes (Apr 1984)

- (a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid;* and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
*Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.
- (b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

- (c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

**I-98 970.5204-27 Consultant or Other Comparable Employment Services
(Apr 1984)**

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor under its contract with DOE, except with the prior approval of the contractor.

I-99 970.5204-28 Assignment (Apr 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the contracting officer.

I-100 970.5204-29 Permits or Licenses (Apr 1984)

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

I-101 970.5204-31 Insurance -- Litigation and Claims (Jun 1997)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
 - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
 - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
 - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed--
 - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, Obligation of Funds (48 CFR (DEAR) 970.5204-15).
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--

- (1) Which are otherwise unallowable by law or the provisions of this contract; or
 - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in DEAR 970.3101-3, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's
- (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j) (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation
- (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
 - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR (DEAR) 970.5204-21.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall--

- (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
- (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I-102 970.5204-38 Government Facility Subcontract Approval (Apr 1994)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I-103 970.5204-39 Acquisition and Use of Environmentally Preferable Products and Services (Oct 1995)

- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
 - (1) Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition, Recycling, and Waste Prevention,"
 - (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822),
 - (3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

- (4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.
- (b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.
- (c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

I-104 970.5204-42 Key Personnel (Apr 1984)

It having been determined that the employees whose names appear (below or in Appendix B), or persons approved by the contracting officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the contracting officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the contractor shall, with the approval of the contracting officer, replace such employee with an employee of substantially equal abilities and qualifications.

I-105 970.5204-43 Other Government Contractors (Apr 1994)

The Government may undertake or award other contracts for additional work or services. The contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

I-106 970.5204-44 Flowdown of Contract Requirements to Subcontracts (Feb 1997) [as revised on 7/30/97]

- (a) The contractor shall include the clauses in paragraph (b) of this clause in appropriate subcontracts.
 - (1) To the extent that the clause is included in this prime contract, the contractor shall comply with that portion of the clause that directs application to subcontracts.
 - (2) To the extent that the clause is not included in this prime contract, or where it is included but there is no instruction for treatment in subcontracts, the contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.
 - (3) In all cases, where a regulation is cited, the contractor shall comply with the regulation in administration of the related clause.
- (b) Clauses and related regulations.
 - (1) Air Transportation by U.S.-Flag Carriers. Clause at FAR 52.247-63.
 - (2) Anti-Kickback Act of 1986. Clause at FAR 52.203-7.
 - (3) Clean Air and Water. Clause at FAR 52.223-2, and follow the requirements of FAR 23.1.
 - (4) Contract Work Hours and Safety Standards Act. Clause at FAR 52.222-4, and follow the requirements of FAR 22.3.
 - (5) Cost or Pricing Data. Clauses prescribed at 48 CFR (DEAR) 970.15406-2, and appropriate contract provisions similar to those set forth at 48 CFR 52.215-10 and 48 CFR 52.215-11, that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.
 - (6) Cost and Schedule Control Systems. Clause at 48 CFR (DEAR) 970.5204-50.
 - (7) Cost Accounting Standards. Clause at FAR 52.230-2, as prescribed in 48 CR (DEAR) 970.30.
 - (8) Davis-Bacon Act. Clauses as directed at FAR 22.407, and follow the requirements of FAR 22.4 to the same extent that they would apply if the subcontract had been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.
 - (9) Employment of the Handicapped. Clause at FAR 52.222-36, and follow the requirements of FAR 22.14.
 - (10) Environmental and Occupational Safety and Health. Clauses as prescribed in 48 CFR (DEAR) 970.2303-2.

- (11) Equal Employment Opportunity. Clauses as prescribed in FAR 22.810, as applicable, and follow the requirements of FAR 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 41 CFR Part 60.
 - (12) [Reserved]
 - (13) Foreign Travel. Clause at 48 CFR (DEAR) 970.5204-52.
 - (14) Nuclear Hazards Indemnity. Clause at 48 CFR (DEAR) 970.2870.
 - (15) Organizational Conflicts of Interest. Clause at 48 CFR (DEAR) 952.209-72 in accordance with 48 CFR (DEAR) 970.0905.
 - (16) Patent, Data and Copyrights. Appropriate clauses as required by 48 CFR (DEAR) Parts 927 and 970.
 - (17) Printing. Clause at 48 CFR (DEAR) 970.5204-19.
 - (18) Privacy Act. Clauses at FAR 52.224-1 and FAR 52.224-2, and follow the requirements of FAR 24.1.
 - (19) Accounts, Records, and Inspection. Clause at 48 CFR (DEAR) 970.5204-9.
 - (20) Safeguarding Classified Information. Appropriate clauses as prescribed at 48 CFR (DEAR) 970.0404.
 - (21) Service Contract Act. Clauses at FAR 52.222-40 and FAR 52.222-41.
 - (22) Small Business and Small Disadvantaged Business Concerns. Clause at FAR 52.219-9.
 - (23) Special Disabled and Vietnam Era Veterans. Clause at FAR 52.222-35, and follow the requirements of FAR Subpart 22.13.
 - (24) Taxes. Clause similar to 48 CFR (DEAR) 970.5204-23 cost-reimbursement. An appropriate tax clause covering tax matters should also be included in fixed-price subcontracts.
 - (25) Termination. Appropriate clause or clauses as set forth at FAR 52.249-1 through 52.249-14.
- (c) Other. Omission from the foregoing list of contract flowdown provisions shall not be construed as waiving a requirement for the contractor to comply with a flowdown requirement for subcontracts appearing elsewhere in this contract.

I-107 970.5204-54 Total Available Fee: Base Fee Amount and Performance Fee Amount (Apr 1999)

- (a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled "Payments and advances."

- (b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Procurement Executive, or designee.
- (c) Determination of Total Available Fee Amount Earned.
- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
 - (2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.
 - (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

- (d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
 - (i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
 - (ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.
 - (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
 - (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor:
 - (i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
 - (ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
 - (iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting

Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

Alternate II: When the award fee cycle consists of one evaluation period, add the following as paragraph (c)(4): Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III: When the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment, add the following text as paragraph (f): Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

Alternate IV: When the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option, add the following text as paragraph (f): Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

I-108 970.5204-58 Workplace Substance Abuse Programs at DOE Sites (Aug 1992)

- (a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts. (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.
 - (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
 - (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I-109 970.5204-59 Whistleblower Protection for Contractor Employees (Apr 1999)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

I-110 970.5204-60 Facilities Management (Nov 1997)

Copies of DOE Directives referenced herein are available from the contracting officer.

- (a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a long-range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.
- (b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.
- (c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10- year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.
- (d) Subcontract requirements. To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

I-111 970.5204-63 Collective Bargaining Agreements -- Management and Operating Contracts (Aug 1993)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.112 970.5204-76 Make-or-Buy Plan (Jun 1997)

- (a) Definitions.
 - Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.
 - Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.
 - Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items"
- (b) Make-or-buy plan. The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:
 - (1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

- (2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.
- (c) Submission and approval. For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:
 - (1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
 - (2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:
 - (i) The contractor is not the least-cost performer, and
 - (ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;
 - (3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";
 - (4) Identification of potential suppliers and subcontractors, if known, and their location and size status;
 - (5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;
 - (6) A description of the impact of a change in current practice of making or buying on the existing work force; and
 - (7) Any additional information appropriate to support and explain the plan.
- (d) Conduct of operations. Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.
- (e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:
 - (1) A lesser period is provided either for the total plan or for individual items or work effort;
 - (2) The circumstances supporting the make-or-buy decisions change, or
 - (3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

I-113 970.5204-77 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Jun 1997)

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.
- (b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I-114 970.5204-78 Laws, Regulations, and DOE Directives (Jun 1997)

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the

revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause entitled, Changes, of this contract.

- (d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 48 CFR (DEAR) 970.5204-2. When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) The contractor is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The contractor is responsible for flowing down the necessary provisions to subcontracts at any tier to which the contractor determines such requirements apply.

I-115 970.5204-79 Access To and Ownership of Records (Jun 1997)(DEVIATION)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the process of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

All occupational health records generated during the performance of Hanford-related activities will be maintained by the Hanford Environmental Health Foundation (HEHF) and are the property of the Government.

All radiation exposure records generated during the performance of Hanford-related activities will be maintained by the Pacific Northwest National Laboratory (PNNL) and shall be the property of the Government.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]

- (1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), except for those records described by the contract as being maintained in Privacy Act systems of records.
- (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
- (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
- (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records Schedules (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Flow down. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I-116 970.5204-80 Overtime Management (Jun 1997)

- (a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.
- (c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:
 - (1) An overtime premium fund (maximum dollar amount);
 - (2) Specific controls for casual overtime for non-exempt employees;
 - (3) Specific parameters for allowability of exempt overtime;
 - (4) An evaluation of alternatives to the use of overtime; and
 - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees:
 - (i) Total cost of overtime;
 - (ii) Total cost of straight time;
 - (iii) Overtime cost as a percentage of straight-time cost;
 - (iv) Total overtime hours;
 - (v) Total straight-time hours; and
 - (vi) Overtime hours as a percentage of straight-time hours.

I-117 970.5204-81 Diversity Plan (Dec 1997)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix G. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

**I-118 970.5204-83 Rights in Data-Technology Transfer (Feb 1998) Alternate I
(Feb 1998)**

- (a) Definitions.
- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
 - (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.
 - (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
 - (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.
 - (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.
 - (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.
 - (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

- (b) Allocation of Rights.
- (1) The Government shall have:
- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
 - (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant, to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software. The rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) of this clause ("Rights in Restricted Computer Software"); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
- (2) The Contractor shall have:
- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use

of its inventions and discoveries, including related data and technology, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as

when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

- (2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes. (End of Notice)

- (3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.
- (e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:
- (1) Contractor Request to Assert Copyright.
 - (i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:
 - (A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an

international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.

- (2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.
- (3) Permission for Contractor to Assert Copyright.
- (i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
- (ii) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
- (iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.
- (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the

Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. _____ with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. (End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the

Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65--
"Appeals"

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee who exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software. (End of Notice)

(5) a similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) Subcontracting.

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE

Patent Counsel. The clause at FAR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data--Facilities clause at DEAR 970.5204-82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - (i) Promptly submit written notice to the Contracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.
 - (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.
- (g) **Rights in Limited Rights Data.**
Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"
- Limited Rights Notice**
These data contain "limited rights data," furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:
- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
 - (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.
(End of Notice)

(h) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice--Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

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

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

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

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part. (End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).
(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(i) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I-119 970.5204-85 Reduction or Suspension of Advance, Partial, or Progress Payments (Dec 1997)

- (a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Secretary that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.
- (b) The contractor shall be afforded a reasonable opportunity to respond in writing.

I-120 970.5204-86 Conditional Payment of Fee, Profit, Or Incentives (Apr 1999) Alternate I (Apr 1999) (DEVIATION)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

- (a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned. Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE

Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

- (b) Minimum requirements for specified level of performance.
 - (1) At a minimum the Contractor must perform the following:
 - (i) The requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive.
 - (ii) All of the performance requirements directly related to requirements specifically incentivized 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 Contracting Officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the 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 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.
- (d) Minimum requirements for Safeguards and Security Program.
 - (1) The Contractor shall develop, obtain DOE approval of, and implement a Safeguards and Security Program in accordance with the provisions of the DEAR clauses 952.204-2, and -70 if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance and compliance requirements of the program will be set forth in the approved Site Safeguards and Security Plan , or similar document. If the Contractor fails to obtain approval of the Safeguards and Security Program or fails to achieve the minimum performance and compliance requirements of the program during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.
 - (2) If, in the performance of this contract, there is a significant breach of security (such as the compromise of classified information or the loss of special nuclear material), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost

savings resulting from a significant breach of security, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

- (e) 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 evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the 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.

I-121 970.5204-87 Cost Reduction (Apr 1999)

- (a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.
- (b) Definitions.
 - Administrative cost is the contractor cost of developing and administering the CRP.
 - Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.
 - Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.
 - DOE cost is the Government cost incurred implementing and validating the CRP.
 - Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

- (1) A specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort or
 - (2) A design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.
- (c) Procedure for submission of CRPs.
- (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:
 - (i) Current Method (Baseline)--A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative; and supporting documentation.
 - (ii) New Method (New Proposed Baseline)--A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished; and supporting documentation.
 - (iii) Feasibility Assessment--A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
 - (2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
 - (i) The proposed contractual arrangement and the justification for its use; and

- (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:
 - (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and Joint oversight agreements;
 - (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:
 - (1) Result in net savings (in the sharing period if a design, process, or method change);
 - (2) Not reappear as costs in subsequent periods; and
 - (3) Not result in any impairment of essential functions.
- (f) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or referral of a CRP within the specified time shall not be construed as approval.
- (g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.
- (h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

- (i) Validation of Shared Net Savings. The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net-shared savings.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings

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

SESECTION JJ

APPENDIX

TITLE

- | | |
|-----|---|
| A. | Key Personnel |
| B. | Advance Understanding of Allowable Personnel Costs |
| C. | DOE Directives |
| D. | Performance Objectives, Measures, Expectations |
| E. | Guidance for Other Required Plans |
| F. | Guidance for Environmental, Safety, Health Planning and Reporting |
| FG. | Guidance for Preparation of Diversity Plan |
| GH. | Fee Plan |
| HI. | Small Business Business Subcontracting Plan |
| IJ. | Wage Determinations Underunder the Service Contract Act |
| JK. | Special Bank Account Agreement |

**PART III - LIST OF DOCUMENTS
EXHIBITS AND OTHER ATTACHMENTS
SECTION J**

APPENDIX A - KEY PERSONNEL

<u>Name</u>	<u>Title</u>
M. P. DeLozier	President and River Protection Project General Manager, Lockheed Martin Hanford Corp.
D. M. McDaniel	Vice President, Information Resource Management and Systems Engineering and Integration, Lockheed Martin Hanford Corp.
H. L. Boston	Vice President and Director, Tank Waste Retrieval and Disposal, Lockheed Martin Hanford Corp. River Protection Project
M. A. Payne	Director, Technical Operations and Engineering, Lockheed Martin Hanford Corp. River Protection Project
D. I. Allen	Director, Tank Waste Operations, Lockheed Martin Hanford Corp. River Protection Project
W. E. Ross	

**PART III - LIST OF DOCUMENTS
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SECTION J**

**APPENDIX B - ADVANCE UNDERSTANDING ON PERSONNEL COSTS
POLICIES AND PROCEDURES**

1.0 INTRODUCTION

This Appendix B supplements Clauses H-2 (Promises and Commitments), H-11 (Advance Understanding on Personnel Costs, Policies, and Procedures), H-15 (Payment and Advances), FAR 52.222-1 (Notice to the Government of Labor Disputes) and DEAR 970.5204-63 (Collective Bargaining Agreements) by setting forth the basis for determining the allowability of those Contractor human resource management policies and related expenses which have cost implications under the contract. This agreement is intended to cover the majority of the human resources costs incurred by the Contractor for work performed by employees assigned to work tasks authorized by the Office of River Protection in accordance with this contract. Failure to mention an item of cost herein does not, however, imply that it is either allowable or unallowable.

The Contractor shall select, employ, manage, and direct the work force; and, apply the policies set forth herein in general conformity with the methods used in the Contractor's private operations insofar as those methods are not inconsistent with this contract. The Contractor shall use effective management review procedures and internal controls to assure that the allowable costs set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

Either party may request that this Appendix B is revised and the parties hereto agree to give consideration in good faith to any such request. Revisions to this Appendix B shall be accomplished by executing a reimbursement authorization as approved by the DOE Contracting Officer or designated representative. When revisions to this Appendix B are agreed upon, revised pages will be issued reflecting such changes and the effective date of such changes.

This Appendix B is adopted for the exclusive benefit and convenience of the parties hereto, and nothing contained herein shall be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. Accordingly, neither this Appendix B nor any part thereof, as amended or modified, will be deemed to constitute a contract between a party hereto and any employee of the

Contractor or to be consideration for, or an inducement or condition of, the employment of any person, or to afford the basis for any claim or right of action whatsoever against a party hereto by any employee of the Contractor or other third party, including Fluor Daniel Hanford (FDH) or its subcontractors.

The Contractor shall promptly furnish all reports and information required or otherwise indicated in this Appendix B to the Contracting Officer or designated representative. The Contractor and the Department of Energy recognize that other data requests may be made from time to time and the parties agree to cooperate in meeting such requests.

2.0 GENERAL

Subject to the specific limitations, conditions, and exclusions of Subpart 31.2 of the Federal Acquisition Regulations (FAR) as supplemented by DOE Acquisition Regulation (DEAR) 931.2, and to the special conditions set forth below, personnel and related costs incurred for work under this contract by the Contractor in accordance with the Contractor's current policies and programs established for the Hanford Site, and which have been furnished to and accepted by DOE, are allowable. Such policies will be summarized and submitted in the form of a Personnel Policies Manual applicable to this contract.

Certain employees of the Contractor, as agreed by the parties, transferred from an affiliate to work under the contract may continue to participate in their affiliate's corporate group insurance, pension and savings, and severance pay plans. Costs for such continued participation while assigned to work under the contract shall be billed to the contract pursuant to applicable FAR cost principles and/or Cost Accounting Standards. The DOE shall have no further obligation for costs incurred by the parent organizations on behalf of such employees after reassignment or termination from contract work.

Revisions to corporate-wide or contract-only policies and employee benefit plans, which increase costs, will be provided to DOE for review for allowability prior to incurrence of costs. Also, see Section H contract clause "Fringe Benefit Ceiling."

3.0 DEFINITIONS

The Contractor – Lockheed Martin Hanford Corporation

Credited Service - Length of service for employees shall mean employment with the Contractor including recognized service with predecessor companies and other contractor organizations. Service for employees who are hired from FDH and its Major Subcontractors (PHMC), shall include all credited service now recognized by the PHMC, including recognized credited service with predecessor DOE Hanford contractors.

Earned service credits for assimilated employees of the Contractor or its affiliates transferred to work under the contract will be counted in the calculation of all service-based benefits.

FAR - Federal Acquisition Regulation

Workweek - The basic (or regular) workweek shall be 40 hours. Alternative workweeks may be established with the approval of the Contracting Officer.

4.0 DIRECT COMPENSATION

The Contractor shall submit its Compensation Program applicable to work under this contract to the Contracting Officer for initial approval. Proposed Compensation Program design changes, which affect costs will also be submitted for review and approval by the Contracting Officer.

4.1 Administration of Wages and Salaries of nonrepresented employees shall be carried out in accordance with sound wage and salary administration principles and in a manner which shall provide for equitable treatment of personnel on a definitive, systematic basis consistent with economic business practices and judicious expenditure of public funds and which shall result in payment of total compensation to individual employees conforming to the standards of reasonableness as contemplated by FAR Subpart 31.205-6.

4.1.1 Salary Increase Fund - Prior to each salary program year, the Contractor will develop and justify, in a manner prescribed by the Contracting Officer, a Salary Increase Fund for exempt employees and a Salary Increase Fund for nonexempt-nonbargaining employees for review and approval. The funds are calculated as a percentage of exempt and nonexempt-nonbargaining base payroll at the end of the prior salary year, expressed as an annualized amount.

All increases are charged to the fund on an annualized basis. Once an individual's salary increase is charged to the fund, reuse of that amount, i.e., recovery, for any other purpose during the salary year is unallowable. If an individual terminates before receiving an increase, the portion of the fund allocated for that increase may remain in the fund.

The Contractor shall also provide a copy of the annually developed salary guidelines prepared for supervisory use, indicating the parameters for granting various increases based on employee performance and current salary.

The dollar amounts of the funds shall be subject to review and adjustment by the Contracting Officer upon a significant reduction in Contractor employment levels, as in a reduction-in-force.

4.1.2 Individual Employee Salary Approval - The base annual salary costs for employees of the Contractor designated as Key Personnel are reimbursable only to the extent each such salary has been approved on DOE Form 3220.5, Application for Contractor Compensation Approval, or other approved form, by the Contracting Officer.

The Contractor will provide supporting information with DOE Form 3220.5 (or other approved form) on all compensation actions well in advance of the proposed effective date.

4.1.3 Incentive Compensation and Bonuses and Project Assignment Allowances will not be allowable costs under this Contract.

4.1.4 Salary Structures - The Contractor shall establish separate salary structures containing position grades, classifications, and salary ranges for Exempt and for Nonexempt Nonbargaining employees who are assigned to work on the contract. The structures shall be submitted to the Contracting Officer for review and approval in advance of incurrence of costs. No salary above the maximum of the salary range shall be allowable except in those cases where a "red circle" rate is authorized.

4.1.5 Overtime Pay

Exempt employees are not eligible for overtime pay except as approved by the Contracting Officer.

Overtime pay shall be based on a 40-hour workweek.

Overtime work performed by employees of affiliate companies of the Contractor, assigned to contract work on a temporary basis, will be administered and paid in accordance with the policies of the affiliate.

4.1.6 Premium Pay. The Compensation Program shall contain provisions for any established premium payments to employees, such as overtime, shift differential and special qualification or certification pay.

4.1.7 Compensation Reports - The Contractor shall submit reports and information relating to the administration of wages, salaries and benefits as the Contracting Officer may require from time-to-time to evaluate the reasonableness of the Contractor's total compensation program.

4.2 Compensation - Employee Welfare and Other Benefit Plans

4.2.1 General

Net costs of employer payments for the following non-statutory employee benefit plans, as related to work under this contract, are allowable subject to the limitations and conditions set out in FAR 31.2. The initial terms and conditions of the plans shall be submitted to and must be approved by the Contracting Officer. Copies of employee communications, such as Summary Plan Descriptions, shall be provided to DOE when issued. Costs incurred in the administration of the following plans are allowable:

- Life Insurance Plan
- Accidental Death & Dismemberment Plan
- Short Term Disability Plan
- Medical Insurance Plan (Indemnity, HMO, PPO, other)
- Dental Insurance Plan
- Vision Care Plan
- Long Term Disability Plan
- Retiree Medical and Life Insurance Plans

Other Benefit Plans

- Flexible Spending Account(s)
- Employee Assistance Program

4.2.2 Separation Pay

A. The cost of separation pay allowances for employees with one (1) or more years of continuous service who are laid off for lack of work will be allowable in accordance with the Contractor's policy. The initial policy, and any changes thereto which increase costs, require the approval of the Contracting Officer.

B. In the event that responsibility for performance of work and services or operation of part or all of the Government-owned facilities under this contract (including standby protection and maintenance functions) is assumed by another contractor or Government agency, employees who are transferred to the employ of, or who are offered employment within their same classification or at positions of comparable responsibility by such contractor or agency, which employment will commence within thirty (30) days after being laid off, will not be paid any separation pay allowance.

4.3 GROUP PENSION PLANS

4.3.1 General - Costs of the Contractor's participation with other Hanford Site contractors in the Operations and Engineering Pension Plan, and the Hanford Contractors Multi-Employer Pension Plan for HAMTC Represented Employees, or identical plans as approved by the Contracting Officer, will be allowable for the purpose of providing retirement benefits only to employees under the contract, and former employees of predecessor Hanford contractors, who are eligible to participate in one or the other of the Plans in accordance with their terms. The Plans must be established and maintained as qualified defined benefits plans under the regulations of the Internal Revenue Service. The Plan and Trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of DOE. With respect to each of the plans, the parties agree as follows:

4.3.2 Administration of the Plans

A. Costs of employer contributions incurred and accrued under the terms of said plans and costs incurred in the course of their administration are allowable to the extent approved by DOE. All accounting for such contributions shall be on an accrual basis. At DOE's request, the Contractor shall provide an itemization of costs incurred for administration. The Plan Fund, not the Contractor, shall be liable for costs incurred in the course of administration.

B. The Contractor will provide to DOE copies of the following annual reports within seven months following the close of each plan year:

(1) Accounting reports and annual actuarial valuations. The reports and valuations will include at least the information specified in DOE Order350.1.

(2) IRS Form 5500 with schedules and attachments, as submitted to the Internal Revenue Service each year.

(3) Financial Accounting Standards Board (FASB) Statement 87 Report. A copy of the FASB 87 report is prepared each year to satisfy the expense-reporting requirement of the Office of Management and Budget.

The final accounting period shall end with the effective date of contract termination or expiration.

C. Actuarial gains and losses developed by annual valuations will be taken into account for purposes of establishing contributions to the Plan as soon as reasonably possible and consistent with requirements of the Employee Retirement Income Security Act of 1974; amendments thereto; and, any other applicable laws.

D. The aggregate annual contribution to the pension fund may range from the minimum specified by the Internal Revenue Code (IRC) Section 412(b) to the amount necessary to fully fund the year-end expected current liability. However, the aggregate annual contribution to each plan shall be no less than the minimum specified by IRC Section 412(b) nor greater than the tax-deductible limit specified by the IRC Section 404. All contributions to the pension fund shall equal the total amount currently attributable to participants in the Plans. These contributions will be based on the actuarial valuation for the most recent Plan year. The fund shall be a trust.

E. If requested by DOE to do so, the Contractor will participate in Pension Plans established on a multiple employer basis applicable to some or all DOE prime cost-type contractors on the Hanford Site.

F. The Contractor will take no action concerning the termination, merger, or spin-off or other action affecting the status of the plans as separate contract-only plans without the approval of the Contracting Officer. If the Contractor and DOE agree to termination of a defined benefit plan, the provisions of Sections 4.3.3 and 4.3.4 below will apply.

G. Unless otherwise required by federal law or resulting from the collective bargaining process, no amendment to any of the Pension Plans shall result in allowable costs under this contract if the adoption date of such amendment is later than 12 months before the termination or expiration date of the contract.

4.3.3 Actions Required at Contract Termination or Expiration

A. No Replacement Contractor. In the event the contract expires or is terminated without a replacement contractor; all employee-accrued benefits are to become 100 percent vested immediately irrespective of the Plan's vesting schedule. All employees would receive benefits equivalent to the value of their vested portion consistent with the Employee Retirement Income Security Act (ERISA) of 1974.

B. Replacement Contractor Situation. In the event of reassignment of all or a portion of the Contractor's work under this contract to a replacement contractor(s) or upon termination or expiration of said contract followed by a replacement contractor(s) the Contractor will assist DOE in the necessary arrangements for the replacement contractor(s) to take over the Plans, Plan assets and Plan liabilities for the employees who transfer to the replacement contractor. Such arrangements shall include preserving for these employees their Pension Service time under the contract by carrying forward Contractor pension service time to the replacement contractor. Granting of such service credits shall not result in duplicate benefits for the same service time.

C. Change of Plan Sponsor. The DOE shall have the unilateral right to change a plan sponsor upon termination or expiration of the contract.

D. Determination of Contract Service Pension Plan Assets and Liabilities.

(1) Contract Service Assets. Contract Service Assets shall be determined in accordance with B. above and shall include all assets attributable to DOE-funded employer contributions (including investment earnings thereon) and the employee accumulations (including investment earnings thereon) determined at current market value until the date of payment or transfer.

(2) Liabilities for Present and Future Benefits. The Contractor actuary shall determine liabilities for employee plan benefits as of the contract termination or expiration date. Except for active participants retained by the Contractor or an affiliate, and those switched over to a replacement contractor, liabilities may be determined by purchase, through competitive bidding, of nonparticipating annuities.

(a) Pensioners, Survivors, and Terminated Vested Members. The liabilities for this class shall be equal to the present value of benefits attributable to Contract Service as of the effective date of termination for such pensioners, survivors, and terminated vested members who separated from the Contractor or a predecessor contractor, prior to the date of contract termination. The present value shall be calculated pursuant to Section 4.3.4 below.

(b) Active Participants Retained by the Contractor or Affiliate. For active employees who are retained by one of the above, the present value of the projected benefits shall be calculated using the unit credit funding method, service and salary history as of the contract termination date, and pursuant to Section 4.3.4 below. When such employee subsequently terminates his/her employment within two years after contract termination, the value of the unvested portion shall revert to DOE.

(c) Active Participants Terminated at Contract Termination or Expiration. For active employees who are not retained by the Contractor or affiliates, and who are not switched over to a replacement contractor, the present value of vested accrued benefits shall be calculated pursuant to Section 4.3.4 below.

(d) Active Participants Transferred to Replacement Contractor. No determination of accrued liabilities by the Contractor is required.

4.3.4 FINANCIAL REQUIREMENTS. Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or spin-off shall accrue interest from the effective date of termination or spin-off until the date of payment or transfer. The rate of accrued interest shall be negotiated in good faith between the parties to the Contract.

A. Terminating Operations, Including Plan Termination.

(1) The Contractor shall calculate pension liabilities attributable to DOE contract work. For this purpose, DOE and the Contractor shall stipulate to one of the following as the basis for the frozen liability calculation:

- (a) the market value of annuities,
- (b) the rate of return on plan assets,
- (c) the FASB 87 discount rate, or
- (d) any other appropriate discount rate.

(2) If the DOE-reimbursed assets in the Plan exceed the frozen DOE liability that was calculated according to (1), the Contractor shall reimburse to DOE such excess, together with earnings on that excess.

(3) If ERISA or the Internal Revenue Code restricts the full transfer of excess DOE reimbursed assets from the Plan, the Contractor shall pay any deficiency directly to DOE.

(4) If assets are less than the frozen DOE liability that was calculated according to (1), DOE shall pay such difference to the Contractor subject to the availability of appropriated funds. These payments will be deposited into the pension plan of the terminated or expired Contractor.

B. Successor Contractor. Any DOE-reimbursed assets awaiting transfer to a successor trustee or to DOE shall be actively managed by the Contractor until the successor trustee or DOE is able to assume stewardship of those assets.

4.3.5 SPECIAL PROGRAMS. The Contractor shall advise DOE and receive prior approval for each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit.

4.4 GROUP SAVINGS PLANS

The Contractor will maintain two savings plans for employees who are eligible to participate in accordance with their terms; one for bargaining unit employees and one for nonbargaining employees (exempt and nonexempt). The plans must be established and maintained as qualified defined contribution plans under the regulations of the Internal Revenue Service. The Plan and Trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of DOE. With respect to the Plans, the parties agree as follows:

A. Costs of employer matching contributions incurred and accrued under the terms of the Plans are allowable. The Plan fund, not the Contractor, shall be liable for the costs incurred in the course of its administration.

B. The Contractor will provide DOE with annual accounting reports within seven months after the close of a Plan year. In addition, a copy of IRS Form 5500 will be provided to DOE each year when prepared by the Contractor.

C. Employee forfeitures of accrued benefits shall be in accordance with the terms of the Plan and such forfeitures shall be used to reduce Contractor contributions made on behalf of remaining participating employees.

D. In the event of Contract expiration or termination, the Contractor, if requested by DOE to do so, will transfer to a replacement contractor the Plan, Plan assets and Plan liabilities.

E. In the event of Plan termination, including partial termination, resulting from such actions as reassignment, termination, or expiration of the Contract or termination of the Plan by the Contractor, Plan assets shall be distributed in accordance with the terms of the Plan relating to Plan termination and the provisions of the Employee Retirement Income Security Act (ERISA) of 1974, as amended. After satisfaction of all Plan liabilities if there are any Plan assets remaining which are permitted by law to revert to the Contractor, such assets shall become payable to the DOE no later than 30 days following the latest date the Plan assets are permitted to revert to the Contractor under ERISA or any other applicable law.

F. The Contractor will take no action concerning termination, merger, spin-off, or other action affecting the status of the Plans as separate, contract-only plans without the approval of DOE.

4.5 PAID ABSENCES

4.5.1 Personal Time Off – A Personal Time Bank (PTB) will be established for eligible employees. Absences for leisure time off, personal time off, facility closure days (holidays), time away from work due to illness or injury, family emergencies or medical/dental appointments will be charged to the employee's PTB account if the employee wishes to receive pay for the absence. All absences of more than four hours will be charged to an exempt employee's PTB account.

Eligible Employee: Regular full-time or part-time exempt and salaried nonexempt employees.

Pay Rate: Hours taken as time off will be paid at the employee's base salary rate in effect at the time of absence.

Composition: Accrual rates will include the following

Vacation:	0-5 years service	80 hrs/yr
	>5 years service	120 hrs/yr
	>10 years service	160 hrs/yr
	>20 years service	200 hrs/yr

Holidays: 72 hours designated as facility closure days
8 hours designated by employee as floater

The facility closure days include New Year's Day, President's Day*, Memorial Day*, July 4th, Labor Day, Thanksgiving Day, Friday after Thanksgiving, December 24, and Christmas Day.

*These days are observed on the day specified by Federal Law

Sick/Personal:	Exempt	40 hrs/yr
	Salaried nonexempt	56 hrs/yr

Time Not Included: Absences for the following will not be taken from an employee's PTB account: Death in the Family (up to 5 days per event), Absences of less than four hours for exempt employees, EA Time (8 hours per year for employees who work north of the Wye Barricade), Jury Duty, Military, Road Conditions, Plant Injury, Volunteerism, and miscellaneous absences as defined in the PTB Policy.

Cash Out Provision: During periods of active service, eligible employees may request partial cash out of accrued PTB hours.

- Employees will be allowed one cash out in a calendar year except in those cases where the employee is terminating.

- At least 120 hours must remain in the employee's account after the cash out.

- The maximum hours which may be cashed out in a calendar year are 120 hours in 2000 and thereafter.

- The rate of cash out will be at the base salary at the time of cash out. Cash out will be in one-hour increments.

- Employees may opt to put the cash directly into their after-tax Savings Plan account.

Maximum PTB Hours: An employee may accumulate up to a maximum number of PTB hours as follows:

- In 2000 900 hours
- In 2001 and thereafter 1000 hours

EXEMPT ACCRUALS (hours per biweekly pay period)

	<u>2000</u>
0-5 years of service	7.69
5-10 years of service	9.23
10 to 20 years of service	10.77
More than 20 years of service	12.31

SALARIED NONEXEMPT ACCRUALS (hours per biweekly pay period)

	<u>2000</u>
5 years of service	8.31
5-10 years of service	9.85
10-20 years of service	11.38
More than 20 years of service	12.92

5.0 TRAVEL AND RELOCATION COSTS– Necessary and reasonable expenses incurred by employees and prospective employees for travel and relocation at the request of the company in connection with work under this Contract are allowable, subject to applicable provisions of FAR Subpart 31.2 and 31.205-46, except that no Project Assignment Allowance nor return relocation costs are allowable. In accordance with these regulations, Contractor employees, transferred from corporate entities will be administered under the Contractor’s common Relocation and Travel policies that are subject to the review and approval of the Contracting Officer.

6.0 COLLECTIVE BARGAINING AGREEMENTS – Wage rates, benefits, and other allowances to be paid to or for bargaining unit employees shall require the approval of the Contracting Officer.

7.0 WORKFORCE RESTRUCTURING – The Contractor will comply with the requirements of the applicable Hanford Site Work Force Restructuring Plan which implements Section 3161 of the National Defense Authorization Act for Fiscal Year 1993. Costs associated with the implementation shall be allowable for those activities described in the applicable Plan.

8.0 EMPLOYEE MORALE, RECREATION, AND WELFARE PROGRAMS –
Costs incurred for such programs are allowable in an amount not to exceed twenty dollars (\$20.00) per employee per year.

**PART III – LIST OF DOCUMENTS
EXHIBITS AND OTHER ATTACHMENTS
SECTION J**

APPENDIX C - DOE DIRECTIVES

Federal Regulations and applicable Washington Administrative Code (i.e., WAC 173-303, etc.) governing DOE activities, and the following Directives as revised are applicable to work and activities conducted/accomplished by contractors at the Hanford Site. In addition, the applicability of given Environment, Safety, and Health (ES&H) Directives to a specific facility or work activity/project may be determined through the Standards/Requirements Identification Document (S/RID) process, as approved by the appropriate DOE authority. Upon approval of an S/RID, that set of requirements is the ES&H directive/requirements set applicable to the facility, work/activity or project and supersedes the ES&H directives included in this list of Directives.

DOE ORDERS AND NOTICES

<u>ORDER NUMBER/CHANGES</u>	<u>TITLE</u>
DOE O 130.1	Budget Formulation Process
DOE M 140.1-1A	Interface with the Defense Nuclear Facilities Safety Board
DOE N 142.1	Unclassified Foreign Visits and Assignments
DOE O 151.1/1&2	Comprehensive Emergency Management System
DOE M 200.1-1	Telecommunications Security Manual (Except Chapter 2)
DOE N 205.1	Unclassified Cyber Security Program
DOE O 220.1/1&2	Performance Indicators and Analysis of Operations Information
DOE O 224.1	Contractor Performance-Based Business Management Process
DOE O 225.1A	Accident Investigations
DOE O 231.1	Environment, Safety, and Health Reporting
DOE O 232.1A	Occurrence Reporting and Processing of Operations Information
DOE M 232.1-1A	Occurrence Reporting and Processing of Operations Information
DOE O 241.1	Scientific and Technical Information Management
DOE O 251.1A	Directives System Order
DOE O 311.1A	Equal Opportunity and Diversity Program
DOE O 350.1	Contractor Human Resources Management Programs

DOE O 413.1	Management Control Program
DOE O 414.1	Quality Assurance
DOE O 420.1/2	Facility Safety
DOE C 420.1 CRD	Facility Safety
DOE O 440.1A	Worker Protection Management for DOE and Contractors
DOE O 440.1A CRD	Worker Protection Management for DOE and Contractors
DOE O 430.1	Life-Cycle Asset Management
DOE O 435.1	Radioactive Waste Management
DOE O 440.2/1&2	Aviation
DOE M 440.2	Aviation Manual
DOE O 442.1	Department of Energy Employee Concerns Program
DOE O 451.1A	National Environmental Protection Act Compliance Program
DOE O 460.1A	Packaging and Transportation Safety
DOE O 460.2/1	Departmental Materials Transportation and Packaging Management
DOE O 460.2 CRD	Departmental Materials Transportation and Packaging Management
DOE O 470.1/1	Safeguards and Security Program
DOE O 470.1 CRD	Safeguards and Security Program
DOE O 470.2	Safeguards and Security Independent Oversight Program
DOE O 471.1	Identification and Protection of Unclassified Controlled Nuclear Information
DOE N 471.1	Extension of DOE O 471.1
DOE O 471.2A	Information Security Program
DOE M 471.2-1B	Classified Matter Protection and Control Manual
DOE O 472.1B	Personnel Security Activities
DOE O 474.1	Control and Accountability for Nuclear Materials
DOE M 474.1-2/1&2	Nuclear Materials Management and Safeguards System Reporting and Data Submission
DOE M 475.1/1	Identifying Classified Information
DOE O 481-1	Work for Others (Non Department of Energy Funded Work)
DOE M 481.1-1	Reimbursable Work for Non-Federal Sponsors Process Manual
DOE O 534.1	Accounting
DOE O 434.1 CRD	Accounting
DOE 1220.1A/1	Congressional and Intergovernmental Affairs
DOE 1230.2	American Indian Tribal Government Policy

DOE 1270.2B	Safeguards Agreement with the International Atomic Energy Agency
DOE 1300.2A	Department of Energy Technical Standards Program
DOE 1300.3	Policy on the Protection of Human Subjects
DOE 1324.5B/1	Records Management Program
DOE 1330.1D	Computer Software Management
DOE 1340.1B	Management of Public Communications Publications and Scientific, Technical and Engineering Publications
DOE 1350.1/1	Audiovisual and Exhibits Management
DOE 1410.2	Mail Management
DOE 1450.3A/1	Call Control/Verification Programs and Authorized Use of Government Telephone Systems
DOE 1450.4	Consensual Listening-In To Oror Recording Telephone/Radio Conversations
DOE 1500.3/1-7	Foreign Travel Authorizations
DOE 1700.1/1-4	Freedom of Information Program
DOE 1800.1A/1	Privacy Act
DOE 2030.4B	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE 2100.8A	Cost Accounting, Cost Recovery, & Interagency Sharing of Information Technology Facilities
DOE 2110.1A/1&2	Pricing of Departmental Materials and Services
DOE 2300.1B	Audit Resolution and Follow-Up
DOE 2320.1C	Cooperation Withwith the Office of the Inspector General
DOE 2320.2B	Establishment of Departmental Position on Inspector General Reports
DOE 4330.2D	In-House Energy Management
DOE 4330.4B	Maintenance Management
DOE 5300.1C	Telecommunications
DOE 5400.1	General Environmental Protection Program
DOE 5400.5/1&2	Radiation Protection of the Public and the Environment
DOE N 5400.9	Sealed Radioactive Source Accountability
DOE 5480.10	Contractor Industrial Hygiene Program
DOE 5480.11/1-3	Radiation Protection for Occupational Workers
DOE N 5480.11	Extension of Radiological Control Manual, Rev. 1
DOE 5480.17	Site Safety Representatives
DOE 5480.19/1	Conduct of Operations Requirements for DOE Facilities
DOE 5480.20A	Personnel Selection, Qualifications, and Training Requirements for DOE Nuclear Facilities

DOE 5480.21	Unreviewed Safety Questions
DOE 5480.22/1&2	Technical Safety Requirements
DOE 5480.23/1	Nuclear Safety Analysis Reports
DOE 5480.30	Nuclear Reactor Safety Design Criteria
DOE 5480.4/1-4	Environmental Protection, Safety, and Health Protection Standards
DOE 5481.1B	Safety Analysis and Review System
DOE 5530.1A	Accident Response Group
DOE 5530.2	Nuclear Emergency Search Team
DOE 5530.3/1	Radiological Assistance Program
DOE 5530.4	Aerial Measuring System
DOE 5530.5/1	Federal Radiological Monitoring and Assessment Center
DOE 5560.1A	Priorities and Allocations Program
DOE 5610.13	Joint Department of Energy/Department of Defense Nuclear Weapon Safety, Security, and Control Activities
DOE 5610.14	Transportation Safeguards System Program Operations
DOE 5610.2/1	Control of Weapon Data
DOE 5632.1C	Protection and Control of Safeguards and Security Interests
DOE M 5632.1C-1/1	Manual for Protection and Control of Safeguards and Security Interests (Except Chapter III, paragraphs 1, 2, and 4 through 9)
DOE 5660.1B	Management of Nuclear Materials
DOE 5670.1A	Management and Control of Foreign Intelligence Counterintelligence Program
DOE 5670.3	Counterintelligence Program
DOE 5820.2A	Radioactive Waste Management
DOE 6430.1A	General Design Criteria
DOE/RW-0333P	Rev. 8, Quality Assurance Requirements and Descriptions
SEN-22-90	DOE Policy on Signatures of RCRA Permit Applications
SEN-35-91	Nuclear Safety Policy
SEN-39-92	Department of Energy Occupational Safety and Health (OSH) Incentives Program

S/RIDS

<u>DOC. NUMBER</u>	<u>REVISION</u>	<u>TITLE</u>
HNF-SD-MP-SRID 001	2	River Protection Project Standards/Requirements Identification Document
HNF-SD-MP-SRID-002	2	Fluor Daniel Hanford Contract Standards/Requirements Identification Document
WHC-SD-MP-SRID-007	0	Waste Encapsulation and Storage Facility Standards/Requirements Identification Document

RL DIRECTIVES

<u>DOC. NUMBER</u>	<u>TITLE</u>
RLID 232.1A	Notification, Reporting and Processing of Operations Information
HFID 232.1B	Notification, Reporting, and Processing Operations Information
RLID 430.1	Systems Engineering Criteria Document and Implementing Directive
RLID 470.1	Safeguards and Security Corrective Action Management System
RLID 470.2	Facility Approval and Registration of Activities
RLID 471.2B	Information Security Program
RLID 473.1	Protection of Safeguards and Security Interests
RLID 473.2	Hanford Site Access Eligibility
RLID 1300.1D	Richland Operations Office Facility Representative Program
RLID 1360.2B	Unclassified Computer Security Program
RLID 5000.1	Baseline Execution and Management Process
RLID 5000.2	Long Range Planning Process
RLID 5480.19	Conduct of Operations Requirements for RL
RLID 5480.29	RL Employee Concerns Program
RLID 5480.31	Startup and Restart of Nuclear Facilities
RLID 5633.3	Control and Accountability of Nuclear Materials at RL
RLID 5635.1	Special Access and Top Secret Access Authorization
RLID 5670.3A	Counterintelligence Program
RLIPP 1322.1B	RL Forms Management
RLIP 5484.1A	Environmental Protection, Safety, and Health Protection Information Reporting Requirements
RLPD 430.1	Hanford Site Systems Engineering Policy
RLPD 450.1	Hanford Environment, Safety and Health Policy
RLPD 5000.1	Site Management System
DOE/RL-92-49	Radiological Assistance Program Plan - Region 8
DOE/RL-93-75	Hanford Facility Contingency Plan
DOE/RL-94-02, Rev 2	Hanford Emergency Response Plan
DOE/RL-92-36	Hanford Site Hoisting and Rigging Manual

DOE/RL-94-125 HSL&T-1		Federal Building Self Protection Plan Hanford Site Lock and Tag Standard, DOE-RL-SOD- INST-L&T.001
DOE/RL-94-97		Selection of Analytical Methods for Mixed Waste Analysis at Hanford
DOE/RL-94-55		Hanford Analytical Services QA Plan
DOE/RL-96-68	2	Hanford Analytical Services Quality Assurance Requirements Document
DOE-0223		RL Emergency Implementing Procedures
DOE-0225		Hanford Emergency Assessment Resource Manual (HEARM)
DOE/RL-96-109	2	Hanford Site Radiological Control Manual (HSRCM-1, Rev.2)

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**APPENDIX D - PERFORMANCE OBJECTIVES, MEASURES, EXPECTATIONS
AND INCENTIVES**

For the period of performance beginning on October 1, 1999

(a) This contract utilizes a performance-based management system to measure the progress of the River Protection Project contractor in satisfying the contract requirements outlined in Section C, Statement of Work, and these Performance Objectives, Measures, and Expectations. The fee earned is linked to the achievement of performance objectives and expectations to ensure that the Contractor is properly motivated consistent with DOE values, values, the achievement of strategic objectives, and the completion of milestone activities.

For the purposes of this contract the following definitions of performance objective, measures and expectations are to be used:

- (1) Performance Objective - a statement of desired results.
- (2) Performance Measure - a quantitative or qualitative method or characteristic for describing performance.
- (3) Performance Expectation - the desired conditions or a target level of performance for a performance measure.

This Section J, Appendix D, includes the Performance Objectives, Measures, and Expectations (i.e. what DOE expects will be accomplished) that DOE has set for the period of performance of this contract (i.e. what DOE expects will be accomplished). The Performance Objectives for this contract have been fixed by the long-term goals and some are derived from milestones in the Tri-Party Agreement. Further, the performance objectives will be used to determine or provide evidence of satisfactory progress toward the longer term longer-term goals of the entire contract period.

The Performance Expectations detailed in the Appendix D have been selected as providing a meaningful yardstick for measuring performance.

Except as otherwise expressly provided in the performance expectation itself, the items of work identified under the performance expectation shall be performed in accordance with the specific performance agreement for the expectation and the specifications/criteria contained therein. The performance agreement specifications/

criteria shall include among other things, as appropriate, applicable criteria and guidelines contained in the Multi-Year Program Plan (MYPP) or specific project/programs plans referenced in the MYPP, DOE Orders and Directives, and other documents as referenced in this cContract.

This Appendix D, in combination with Section C, Statement of Work, constitutes the minimum performance requirements of the cContract. In addition, successful achievement of all work set forth in Section C and the performance expectations contained in this Appendix D, constitutes satisfactory contract performance.

It is important that the Contractor completes (in accordance with contract quality requirements) all contractually identified critical and non-critical milestones on schedule and within estimated costs. The fee provisions in this contract are intended to motivate the Contractor to deliver outcomes exceeding DOE and contract scope of work expectations but are done within approved schedules or budgets. The fee pool system is also intended to reward the Contractor for successfully implementing technologies or processes which achieve results better, faster, and/or cheaper.

2. The performance objectives, measures, and expectations for the period of performance are set forth Attachment Number 1 to this Appendix. TO BE DETERMINED

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APPENDIX E - GUIDANCE FOR OTHER REQUIRED PLANS

INTRODUCTION

The Contractor shall provide the following subject specific plans which expand on the discussion in Section C, Statement of Work, or applicable contract clause.

A. Integrated Environment, Safety & Health Management System (ISMS) Plan

Specific guidance on the PHMC ISMS Plan is found in contract cClause H.5., “Integration of Environment, Safety, and Health Into Work Planning and Execution”, in Section I of this contract.

C. Systems Engineering Management Plan

The Systems Engineering Management Plan shall describe in detail the approach the Contractor will take to integrate a Systems Engineering functional analysis in which mission requirements drive functions, and functions drive architecture, into the overall management and integration of the Hanford RPP workscope as detailed in Section C, Statement of Work. System engineering techniques and principles shall be utilized to establish the technical integrity of the RPP workscope. Innovative technologies shall be evaluated against the baseline.

D. Risk Management Plan

The Contractor shall provide a Risk Management Plan which describes the system to be used for identifying, evaluating, assessing and mitigating site risks of all types (e.g., financial, technical, safety, mortgages, environment, etc.). The Plan shall also describe how risk management is integrated and implemented into planning, work prioritization, and sitewide RPP decision-making. The application of innovative technologies to mitigate the risks is expected.

E. Litigation Management Plan

The purpose of the Litigation Management Plan will be to control the cost of litigation and to provide for employment of only that level of private counsel appropriate to a particular requirement.

The Plan shall comply with the Guidelines set forth in DOE Acquisition Letter 94-13 of August 25, 1994, (Federal Register 44981, dated 8/31/94) and such further instructions as provided by the Contracting Officer.

F. Diversity Plan

Specific guidance on the preparation of a Diversity Plan is found in Appendix GG of this Section J.

G. Internal Audit Plan

The Contractor shall submit an annual plan for internal audits of the Contractor and for audits of major onsite, cost reimbursement subcontractors. The Plan shall list planned actual audits or areas to be audited and a schedule for such audits. The official audit report(s), including the working papers (as required), shall be submitted or made available to the Contracting Officer or his/her designee.

H. Integrated Hanford RPP Communication Plan

The Contractor shall develop an Integrated Hanford RPP Communication Plan detailing how the full range of stakeholders will receive information in a timely, accurate, complete, and business-like manner. The Plan shall include the requirements of DOE's Openness Initiatives and Public Involvement Policies.

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**APPENDIX F - ENVIRONMENT, SAFETY, AND HEALTH BUDGET
PLANNING AND EXECUTION**

The following represents additional criteria for environment, safety and health (ES&H) budget planning and execution, to be included as part of the requirements of this contract.

1. **ES&H PLAN FOR BUDGET EXECUTION YEAR**

Respond to the most recent Unicall Submittal, incorporate budget decisions, and include any new information for the upcoming execution year.

1.1 ES&H Risk Management Conclusions

Summarize the risk management conclusions for the upcoming execution year (updated to reflect recent budgeting decisions), including a summary decision of the major risks and important ES&H issues being managed at the facility.

1.2 ES&H Budget Summary

Summarize the ES&H budget for the upcoming execution year (analogous to the cost prepared for the Unicall Submittal).

1.3 Performance Measures and Commitments

Include the proposed ES&H performance commitments (measures) for the upcoming execution year. It is important that these performance measures address the most significant risks identified, and have performance criteria that are measurable.

2. **SUMMARY OF PREVIOUS YEAR'S ES&H PERFORMANCE**

Provide a summary of the previous year's ES&H performance, including the actual costs of implementing the ES&H activities.

2.1 Status of Performance Measures and Commitments

Status of the previous year's performance with respect to the measures and commitments negotiated for the previous year.

Summary level conclusions from the previous year's self-assessments of ES&H programs and activities.

Status of any major commitments arising from Consent Orders or Agreements with State Agencies or the EPA regarding environmental/ecological obligations.

2.2 Summary of Actual Costs

Summarize the actual ES&H expenditures for the previous year, and how this information will be used in preparing the ES&H Plan for the next budget cycle.

(See DOE letter 98-PRO-645 clarifying Appendix F.)

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APPENDIX FG - GUIDANCE FOR PREPARATION OF DIVERSITY PLAN

The purpose of this Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues may already be addressed in a contract package. To the extent these issues are already addressed in a contract, the Contractor need only summarize or cross reference the parts of the Plan already developed elsewhere in the contract.

Work Force

This contract includes certain provisions on Equal Opportunity and Affirmative Action. These provisions are found in clauses contained in Section I (FAR 52.222-26, "Equal Opportunity", FAR 52.222-27, "Affirmative Action Compliance Requirements for Construction", FAR 52.222-35, "Affirmative Action for Disabled Veterans – Veterans of the Vietnam War", FAR 52.222-36, "Affirmative Action For Workers with Disabilities", FAR 52.222-37, "Employment Reports on Disabled Veterans and Veterans of the Vietnam Era"), and regulatory guidance is found at FAR Part 22 (48 CFR Part 22). The contractor Contractor should discuss its policies and plans for implementation of these provisions in its operations. If the Contractor already has procedures in place, these should be discussed and copies of any policies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may include: educational assistance allowances, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any programs supporting Historically Black Colleges and Universities.

Employee training and educational opportunities may also be subject to collective bargaining agreements at the site. If that is the case, it is not the Department's intent that the contractor Contractor develop develops an independent structure for employee training and educational opportunities. In preparation of its Diversity Plan, the Contractor should outline the requirements already placed on it under existing bargaining agreements, discuss any proposals for changes to be raised at any future bargaining sessions, and discuss any educational or training programs which it operates, or will operate, independently of those provided by the unions.

Community Involvement and Outreach

Contractor community relations activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. Depending upon the terms negotiated between the Department and the contractor, some of these costs may be reimbursable. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

The finalized contract action will contain FAR 52.219-9 "Small Business Subcontracting Plan, Alt II" (JAN 1999/Oct 1999) and other small business related clauses (FAR 52.219-8, "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns", FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan", FAR 52.219-16, "Liquidated Damages-Subcontracting Plan"). Additionally, the RFP contains additional guidance in an Appendix H entitled "Small Business and Small Disadvantaged Business Subcontracting Plan" (see Section J, Appendix ?). If the Contractor has already met the requirements under FAR 52.219-9, "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" and the referenced Appendix, this information should be briefly summarized and/or provided as an attachment to the Diversity Plan. If the Contractor is participating, or plans to participate, in the Department's Mentor Protege Program, this involvement, or planned involvement, should be summarized or discussed. Information concerning its subcontracting plans already developed and submitted by the Contractor does not need to be redeveloped or renegotiated by the Contractor.

Economic Development (Including Technology Transfer)

Many of the Department's contract actions include Technology Transfer provisions which may be found in the H Section I, Special Contract provisions/Clauses, or among the patent and intellectual property clauses of Section I, Standard Clauses. Planning or activities developed under the Technology Transfer clause may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business or small disadvantaged businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

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APPENDIX H - FEE PLAN

FOR THE PERIOD OCTOBER 1, 19989 - SEPTEMBER 30, 19992000

(a) The total available fee pool for FY99 2000 as set forth in Clause B.43 of this Contract is allocated as follows:

Base Fee - none
Award Fee - none
Performance fee - 100%

(b) **70 TBD** percent of the total available fee pool in contract clause B.43 is allocated to the critical

few objectives, measures, and expectations, as follows:

Objectives - 0.0TBD%
Measures. - - 0.0TBD%
Expectations - 100TBD%

The specific percentage of fee assigned to an individual objective, measure, or expectation is set forth in SectiJ, Appendix D. Available fee is suballocated into fee for baseline performance, superincreasedstretch performance, and negative fee for poor performance. If the contractorContractor fails to meet a given performance objective, measure, or expectation, a negative (deduct from) fee will may result (if applicable). The specific amount will be deducted from the total amount of fee earned. However, in no event will the amount deducted for failure to meet performance objectives, measures, or expectations exceed 20% of the total amount of fee earned on all incentives or 25% of the total available fee amount whichever is the lesser of the two.

(3) **TBD** of the total available fee pool in contract clause B.3 is allocated to the comprehensive incentive. The DOE Performance Expectation Plan for Lockheed Martin Hanford Corp. Performance During the Twelve-Month Evaluation Period, Ending September 30, 2000, dated **TBD** establishes the bases to measure performance.30 percent of the total available fee pool in contract clause B.4 is allocated to a MEGA

incentive. The DOE Performance Expectation Plan for FDH Company Performance

During the Twelve-Month Evaluation Period, Ending September 30, 1999, dated October 1, 1998, establishes the bases to measure performance

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**APPENDIX I - SMALL, SMALL DISADVANTAGED AND WOMAN-OWNED
SMALL BUSINESS SUBCONTRACTING PLAN**

RESERVED

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APPENDIX J - WAGE DETERMINATION UNDER THE SERVICE CONTRACT

ACTFor the most recent version of Modification M0__, please go to the following

Internet site:

<http://www.rl.gov/phmc/contract.mods.htm>

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**APPENDIX K - SPECIAL BANK ACCOUNT AGREEMENT FOR USE WITH
THE PAYMENTS CLEARED FINANCING ARRANGEMENT
OCTOBER 1, 1999, THROUGH SEPTEMBER 30, 2000**

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