

**PART II - CONTRACT CLAUSES**

**SECTION I**

**CONTRACT CLAUSES**

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**CONTRACT CLAUSES**

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

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

<https://www.acquisition.gov/far/index.html>

| Clause No. | FAR/DEAR Reference | Title  | Fill-In Information (see FAR 52.104(d)) |
|------------|--------------------|--|---|
| I.2        | FAR 52.202-1       | Definitions (Jul 2004)   | None                                    |
| I.3        | FAR 52.203-3       | Gratuities (Apr 1984)  | None                                    |
| I.4        | FAR 52.203-5       | Covenant Against Contingent Fees (Apr 1984)  | None                                    |
| I.5        | FAR 52.203-6       | Restrictions on Subcontractor Sales to the Government (Jul 1995)   | None                                    |
| I.6        | FAR 52.203-7       | Anti-Kickback Procedures (Jul 1995)  | None                                    |
| I.7        | FAR 52.203-8       | Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)  | None                                    |
| I.8        | FAR 52.203-10      | Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)  | None                                    |
| I.9        | FAR 52.203-12      | Limitations on Payments to Influence Certain Federal Transactions (Jun 2003)   | None                                    |
| I.9a**     | FAR 52.203-15      | Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)                                      | None                                    |
| I.10       | FAR 52.204-4       | Printed or Copied Double-Sided on Recycled Paper (Aug 2000)  | None                                    |
| I.11       | FAR 52.204-7       | Central Contractor Registration (Oct 2003) ( <i>see full text version at end of Section I</i> )                                    | None                                    |
| I.11a**    | FAR 52.204-11      | American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) ( <i>See full text version, Contract Section I</i> )      | None                                    |
| I.12       | FAR 52.209-6       | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (Jul 1995) | None                                    |
| I.13       | FAR 52.215-2       | Audit and Records – Negotiation (Jun 1999) Alternate I (Mar 2009)  | None                                    |
| I.14       | FAR 52.215-8       | Order of Precedence – Uniform Contract Format (Oct 1997)   | None                                    |
| I.15       | FAR 52.215-11      | Price Reduction for Defective Cost or Pricing Data – Modifications (Oct 1997)  | None                                    |
| I.16       | FAR 52.215-13      | Subcontractor Cost or Pricing Data – Modifications (Oct 1997)  | None                                    |
| I.17       | FAR 52.215-15      | Pension Adjustments and Asset Reversions (Jan 2004)  | None                                    |

| Clause No. | FAR/DEAR Reference | Title   | Fill-In Information (see FAR 52.104(d))              |
|------------|--------------------|---|--|
| I.18       | FAR 52.215-17      | Waiver of Facilities Capital Cost of Money (Oct 1997)<br><i>(Solicitation Note: See FAR 52.215-16 Facilities Capital Cost of Money – If the Offeror proposes FCCOM, this Clause is self-deleting in the Contract)</i> | None   |
| I.19       | FAR 52.215-18      | Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Oct 1997)   | None   |
| I.20       | FAR 52.215-19      | Notification of Ownership Changes (Oct 1997) <i>(see full text version at end of Section I)</i>   | None   |
| I.21       | FAR 52.216-7       | Allowable Cost and Payment (Dec 2002)   | None   |
| I.22       | FAR 52.216-10      | Incentive Fee (Mar 1997)  | (e) 20, 20, 15, 0                                    |
| I.22a**    | FAR 52.216-24      | Limitation of Government Liability <i>(see full text version, Contract Section I)</i>   | (a) \$233,601,000<br>(b) \$233,601,000               |
| I.23       | FAR 52.219-4       | Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)  | None   |
| I.24       | FAR 52.219-8       | Utilization of Small Business Concerns (May 2004)   | None   |
| I.25       | FAR 52.219-9       | Small Business Subcontracting Plan (Jan 2002) – Alternate II (Oct 2001)   | None   |
| I.26       | FAR 52.219-16      | Liquidated Damages – Subcontracting Plan (Jan 1999)   | None   |
| I.27       | FAR 52.219-23      | Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Jun 2003)  | (b) 0  |
| I.28       | FAR 52.219-25      | Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (Oct 1999)  | None   |
| I.29       | FAR 52.222-1       | Notice to the Government of Labor Disputes (Feb 1997)   | None   |
| I.30       | FAR 52.222-3       | Convict Labor (Jun 2003)  | None   |
| I.31       | FAR 52.222-4       | Contract Work Hours and Safety Standards Act – Overtime Compensation (Sep 2000)   | None   |
| I.32       | FAR 52.222-21      | Prohibition of Segregated Facilities (Feb 1999)   | None   |
| I.33       | FAR 52.222-26      | Equal Opportunity (Apr 2002)  | None   |
| I.34       | FAR 52.222-35      | Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)  | None   |
| I.35       | FAR 52.222-36      | Affirmative Action for Workers with Disabilities (Jun 1998)   | None   |
| I.36       | FAR 52.222-37      | Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)  | None   |
| I.36.a     | FAR 52.222-39      | Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)   | None   |
| I.37       | FAR 52.222-41      | Service Contract Act of 1965, As Amended (May 1989)   | None   |
| I.38       | FAR 52.222-42      | Statement of Equivalent Rates for Federal Hires (May 1989)  | Employee Class<br>Monetary Wage –<br>Fringe Benefits |
| I.38.a     | FAR 52.222-54      | Employment Eligibility Verification   | None   |
| I.39       | FAR 52.223-3       | Hazardous Material Identification and Material Safety Data (Jan 1997) – Alternate I (Jul 1995)  | (b) TBD  |
| I.40       | FAR 52.223-5       | Pollution Prevention and Right-to-Know Information (Aug 2003)   | None   |
| I.41       | FAR 52.223-10      | Waste Reduction Program (Aug 2000)  | None   |
| I.42       | FAR 52.223-12      | Refrigeration Equipment and Air Conditioners (5/1995)   | None   |

| Clause No. | FAR/DEAR Reference | Title   | Fill-In Information (see FAR 52.104(d))  |
|------------|--------------------|---|--|
| I.43       | FAR 52.223-14      | Toxic Chemical Release Reporting (Aug 2003)   | None   |
| I.44       | FAR 52.224-1       | Privacy Act Notification (Apr 1984)   | None   |
| I.45       | FAR 52.224-2       | Privacy Act (Apr 1984)  | None   |
| I.46       | FAR 52.225-11      | Buy American Act – Construction Materials Under Trade Agreements (Jun 2004) (see full text version at end of Section I)                                   | None   |
| I.47       | FAR 52.225-13      | Restrictions on Certain Foreign Purchases (Dec 2003)  | None   |
| I.47a**    | FAR 52.225-23      | Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials under Trade Agreements (Mar 2009)            | "NONE"   |
| I.47b**    | FAR 52.225-24      | Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials under Trade Agreements. (Mar 2009) | "NONE"   |
| I.48       | FAR 52.226-1       | Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)  | None   |
| I.49       | FAR 52.227-1       | Authorization and Consent (Jul 1995)  | None   |
| I.50       | FAR 52.227-2       | Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)  | None   |
| I.51       | FAR 52.227-3       | Patent Indemnity (Apr 1984)   | None   |
| I.51.a     | FAR 52.227-4       | Patent indemnity – Construction Contracts (Apr 1984)  | None   |
| I.51.b     | FAR 52.227-9       | Refund of Royalties (Apr 1984)  | None   |
| I.52       | FAR 52.227-23      | Rights to Proposal Data (Technical) (Jun 1987)  | TBD/TBD  |
| I.53       | FAR 52.230-2       | Cost Accounting Standards (Apr 1998)  | None   |
| I.54       | FAR 52.230-6       | Administration of Cost Accounting Standards (Nov 1999)  | None   |
| I.55       | FAR 52.232-9       | Limitation on Withholding of Payments (Apr 1984)  | None   |
| I.56       | FAR 52.232-17      | Interest (Jun 1996)   | None   |
| I.57       | FAR 52.232-22      | Limitation of Funds (Apr 1984)  | None   |
| I.58       | FAR 52.232-23      | Assignment of Claims (Jan 1986)   | None   |
| I.59       | FAR 52.232-25      | Prompt Payment (Oct 2003) – Alternate I (Feb 2002)  | None   |
| I.60       | FAR 52.232-34      | Payment of Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999)  | (b) No later than 15 days prior to submission of the first request for payment |
| I.61       | FAR 52.233-1       | Disputes (Jul 2002) – Alternate I (Dec 1991)  | None   |
| I.62       | FAR 52.233-3       | Protest After Award (Aug 1996) – Alternate I (Jun 1985)   | None   |
| I.63       | FAR 52.236-2       | Differing Site Conditions (Apr 1984)  | None   |
| I.64       | FAR 52.236-3       | Site Investigation and Conditions Affecting the Work (Apr 1984)   | None   |
| I.65       | FAR 52.237-3       | Continuity of Services (Jan 1991)   | None   |
| I.66       | FAR 52.242-1       | Notice of Intent to Disallow Costs (Apr 1984)   | None   |
| I.67       | FAR 52.242-3       | Penalties for Unallowable Costs (May 2001)  | None   |
| I.68       | FAR 52.242-4       | Certification of Final Indirect Costs (Jan 1997)  | None   |
| I.69       | FAR 52.242-13      | Bankruptcy (Jul 1995)   | None   |

| Clause No. | FAR/DEAR Reference | Title  | Fill-In Information (see FAR 52.104(d))  |
|------------|--------------------|--|--|
| I.70       | FAR 52.243-2       | Changes – Cost Reimbursement (Aug 1987) – Alternate I (Apr 1984)   | None   |
| I.71       | FAR 52.243-6       | Change Order Accounting (Apr 1984)   | None   |
| I.72       | FAR 52.243-7       | Notification of Changes (Apr 1984)   | (b) 10 days.<br>(d) 30 days.   |
| I.73       | FAR 52.244-2       | Subcontracts (Aug 1998) – Alternate II (Aug 1998)  | (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:<br>(1) All contract actions over \$10M.<br>(2) All sole source actions over \$3M.<br>(3) Termination settlement agreements over \$50K.<br><br>(k) None. |
| I.74       | FAR 52.244-5       | Competition in Subcontracting (Dec 1996)   | None   |
| I.75       | FAR 52.244-6       | Subcontracts for Commercial Items (Jul 2004) ( <i>see full text version at end of Section I</i> )  | None   |
| I.76       | FAR 52.245-5       | Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts) (May 2004)  | None   |
| I.77       | FAR 52.246-25      | Limitation of Liability – Services (Feb 1997)  | None   |
| I.78       | FAR 52.247-1       | Commercial Bill of Lading Notations (Apr 1984)   | (a) DOE<br>(b) DOE Contract No. DE-AC06-04RL14655<br>DOE/RL Office of Procurement Services, A7-80, P.O. Box 550, Richland, WA 99352  |
| I.79       | FAR 52.247-63      | Preference for U.S.-Flag Air Carriers (Jun 2003)   | None   |
| I.80       | FAR 52.247-67      | Submission of Commercial Transportation Bills to the General Services Administration for Audit (Feb 2006) ( <i>See full text version, Contract Section I</i> ) | (c) Fill-in information is underlined in full text   |
| I.81       | FAR 52.249-6       | Termination (Cost Reimbursement) (May 2004)  | None   |
| I.82       | FAR 52.249-14      | Excusable Delays (Apr 1984)  | None   |

| Clause No. | FAR/DEAR Reference | Title  | Fill-In Information (see FAR 52.104(d))  |
|------------|--------------------|--|--|
| I.83       | FAR 52.251-1       | Government Supply Sources (Apr 1984)   | None   |
| I.84       | FAR 52.251-2       | Interagency Fleet Management System Vehicles and Related Services (Jan 1991)   | None   |
| I.85       | FAR 52.253-1       | Computer Generated Forms (Jan 1991)  | None   |
| I.86       | DEAR 952.202-1     | Definitions (Jan 1997)   | None   |
| I.87       | DEAR 952.203-70    | Whistleblower Protection for Contractor Employees (Dec 2000)   | None   |
| I.88       | DEAR 952.204-2     | Security (May 2002)  | None   |
| I.89       | DEAR 952.204-75    | Public Affairs (Dec 2000)  | None   |
| I.90       | DEAR 952.208-70    | Printing (Apr 1984)  | None   |
| I.91       | DEAR 952.216-7     | Allowable Cost and Payment (Jan 1997); Alternate II  | None   |
| I.92       | DEAR 952.217-70    | Acquisition of Real Property (Apr 1984)  | None   |
| I.93       | DEAR 952.223-71    | Integration of Environment, Safety, and Health into Work Planning and Execution (Dec 2000)                           | None   |
| I.94       | DEAR 952.223-75    | Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)  | None   |
| I.95       | DEAR 952.224-70    | Paperwork Reduction Act (Apr 1994)   | None   |
| I.96       | DEAR 952.226-74    | Displaced Employee Hiring Preference (Jun 1997)  | None   |
| I.97       | DEAR 952.227-82    | Rights to Proposal Data (Apr 1994)   | Offerors to Fill In  |
| I.98       | DEAR 952.231-71    | Insurance -- Litigation and Claims (Apr 2002)  | None   |
| I.99       | DEAR 952.242-70    | Technical Direction (Dec 2000)   | None   |
| I.100      | DEAR 952.245-5     | Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts)                                 | None   |
| I.101      | DEAR 952.250-70    | Nuclear Hazards Indemnity Agreement (Jun 1996)   | None   |
| I.102      | DEAR 952.251-70    | Contractor Employee Travel Discounts (Dec 2000)  | None   |
| I.103      | DEAR 970.5203-1    | Management Controls (Dec 2000)   | None   |
| I.104      | DEAR 970.5204-2    | Laws, Regulations, and DOE Directives (Dec 2000)   | None   |
| I.105      | DEAR 970.5204-3    | Access to and Ownership of Records (Dec 2000)  | (b)(1) through (b)(5) are Contractor-owned records                                     |
| I.106      | DEAR 970.5223-3    | Workplace Substance Abuse Programs at DOE Sites (Dec 2000)   | None   |
| I.107      | DEAR 970.5226-2    | Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000) | None   |
| I.108      | DEAR 970.5226-3    | Community Commitment (Dec 2000)  | None   |
| I.109      | DEAR 970.5227-1    | Rights in Data – Facilities (Dec 2000)   | Paragraph (e), subsection (c) of Limited Rights Notice modified per * at end of table. |
| I.110      | DEAR 970.5227-11   | Patent Rights – Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (Dec 2000)        | None   |
| I.111      | DEAR 970.5231-4    | Preexisting Conditions (Dec 2000)  | Fill in date contract begins   |

| Clause No. | FAR/DEAR Reference | Title  | Fill-In Information (see FAR 52.104(d)) |
|------------|--------------------|--|---|
| I.112      | DEAR 970.5232-3    | Accounts, Records, and Inspection (Dec 2000); Alternate II                                 | None                                    |
| I.113      | DEAR 970.5232-5    | Liability with Respect to Cost Accounting Standards (DEC 2000)                             | None                                    |
| I.114      | DEAR 970.5232-7    | Financial Management System (Dec 2000)   | None                                    |
| I.128      | DEAR 952.250-70    | Nuclear Hazards Indemnity Agreement (Oct 2005) (See full text version, Contract Section I) | None                                    |

The following Clauses I.115 through I.127 are specifically applicable to construction work under this Contract:

| Clause No. | FAR/DEAR Reference | Title   | Fill-In Information (see FAR 52.104(d)) |
|------------|--------------------|---|---|
| I.115      | FAR 52.222-6       | Davis-Bacon Act (Feb 1995)  | None                                    |
| I.116      | FAR 52.222-7       | Withholding of Funds (Feb 1988)   | None                                    |
| I.117      | FAR 52.222-8       | Payrolls and Basic Records (Deviation Nov 2009) (See full text version, Contract Section I) | None                                    |
| I.118      | FAR 52.222-9       | Apprentices and Trainees (Feb 1988)   | None                                    |
| I.119      | FAR 52.222-10      | Compliance with Copeland Act Requirements (Feb 1988)  | None                                    |
| I.120      | FAR 52.222-11      | Subcontracts (Labor Standards) (Feb 1988)   | None                                    |
| I.121      | FAR 52.222-12      | Contract Termination – Debarment (Feb 1988)   | None                                    |
| I.122      | FAR 52.222-13      | Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)                          | None                                    |
| I.123      | FAR 52.222-14      | Disputes Concerning Labor Standards (Feb 1988)  | None                                    |
| I.124      | FAR 52.222-15      | Certification of Eligibility (Feb 1988)   | None                                    |
| I.125      | FAR 52.222-16      | Approval of Wage Rates (Feb 1988)   | None                                    |
| I.126      | FAR 52.236-18      | Work Oversight in Cost Reimbursement Construction Contracts (Apr 1984)                      | None                                    |
| I.127      | FAR 52.236-19      | Organization and Direction of the Work (Apr 1984)   | None                                    |

\* Clause I.109, DEAR 970.5227-1, Rights in Data – Facilities, the paragraph (e) Limited Rights Notice, Subsection (c) is modified as follows:

Delete “(except for manufacture)” and after “work performed under their contracts” insert “, as may be necessary for completion of the River Corridor Closure Project.”.

NOTE: The \*\* signifies this clause is only applicable to the Recovery Act work performed under CLIN 4 as specified in Section C and detailed in Attachment J-1.

**I.11 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

- (a) Definitions. As used in this clause- "Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

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

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

"Registered in the CCR database" means that-

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
  - (2) The Government has validated all mandatory data fields and has marked the record "Active".
- (b)
- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
  - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An offeror may obtain a DUNS number-
    - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
    - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
  - (2) The offeror should be prepared to provide the following information:
    - (i) Company legal business.
    - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
    - (iii) Company Physical Street Address, City, State, and Zip Code.

- (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
  - (v) Company Telephone Number.
  - (vi) Date the company was started.
  - (vii) Number of employees at your location.
  - (viii) Chief executive officer/key manager.
  - (ix) Line of business (industry).
  - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g)
- (1)
    - (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.
    - (ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

- (2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
- (h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

**I.11a FAR 52.204-11 AMERICAN RECOVERY AND REINVESTMENT ACT – REPORTING REQUIREMENTS (JUL 2010)**

- (a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors). These FAQs are also linked under <http://www.FederalReporting.gov>.
- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
- (c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).
- (d) The Contractor shall report the following information, using the online reporting tool available at [www.FederalReporting.gov](http://www.FederalReporting.gov).
  - (1) The Government contract and order number, as applicable.
  - (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
  - (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
  - (4) Program or project title, if any.
  - (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

- (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—
  - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
  - (ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).
- (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
  - (i) In the Contractor's preceding fiscal year, the Contractor received—
    - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
  - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(10)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as

required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) The applicable North American Industry Classification System (NAICS) code.
- (vi) Funding agency.
- (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
  - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
    - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
    - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
  - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.
- (xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—

- (A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
- (B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at [http://www.whitehouse.gov/omb/recovery\\_faqs\\_contractors](http://www.whitehouse.gov/omb/recovery_faqs_contractors).

**I.20 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
  - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
  - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall:
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(k).

**I.22a 52.216-24 LIMITATION OF GOVERNMENT LIABILITY**

- (a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$233,601,000.
- (b) The maximum amount for which the Government shall be liable if this contract is terminated is \$233,601,000.
  - (1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

- (i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);
  - (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
  - (iii) Any other clauses, terms, and conditions mutually agreed upon.
- (2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

**I.46 FAR 52.225-11 BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUN 2004)**

(a) Definitions. As used in this clause-

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

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

"Cost of components" means-

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

"Designated country" means any of the following countries:

|            |                    |
|------------|--------------------|
| Aruba      | Korea, Republic of |
| Austria    | Latvia             |
| Bangladesh | Lesotho            |
| Belgium    | Liechtenstein      |
| Benin      | Lithuania          |

|                          |                       |
|--------------------------|-----------------------|
| Bhutan                   | Luxembourg            |
| Botswana                 | Malawi                |
| Burkina Faso             | Maldives              |
| Burundi                  | Mali                  |
| Canada                   | Malta                 |
| Cape Verde               | Mozambique            |
| Central African Republic | Nepal                 |
| Chad                     | Netherlands           |
| Comoros                  | Niger                 |
| Cyprus                   | Norway                |
| Czech Republic           | Poland                |
| Denmark                  | Portugal              |
| Djibouti                 | Rwanda                |
| Equatorial Guinea        | Sao Tome and Principe |
| Estonia                  | Sierra Leone          |
| Finland                  | Singapore             |
| France                   | Slovak Republic       |
| Gambia                   | Slovenia              |
| Germany                  | Somalia               |
| Greece                   | Spain                 |
| Guinea                   | Sweden                |
| Guinea-Bissau            | Switzerland           |
| Haiti                    | Tanzania U.R.         |
| Hong Kong                | Togo                  |
| Hungary                  | Tuvalu                |
| Iceland                  | Uganda                |
| Ireland                  | United Kingdom        |

|          |               |
|----------|---------------|
| Israel   | Vanuatu       |
| Italy    | Western Samoa |
| Japan    | Yemen         |
| Kiribati |               |

"Designated country construction material" means a construction material that-

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

"Domestic construction material" means-

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

"Foreign construction material" means a construction material other than a domestic construction material.

"Free Trade Agreement country" means Canada, Chile, Mexico, or Singapore.

"Free Trade Agreement country construction material" means a construction material that-

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

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

(b) Construction materials.

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

- (2) The Contractor shall use only domestic, designated country, or FTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

None

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*[Contracting Officer to list applicable excepted materials or indicate "none"]*

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-
  - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act.
  - (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

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

| Foreign and Domestic Construction Materials Price Comparison |                        |                 |                         |
|--|------------------------|-----------------|-------------------------|
| <u>Construction Material Description</u>                     | <u>Unit of Measure</u> | <u>Quantity</u> | <u>Price (Dollars)*</u> |
| <i>Item 1:</i>   |                        |                 |                         |
| Foreign construction material                                | _____                  | _____           | _____                   |
| Domestic construction material                               | _____                  | _____           | _____                   |
| <i>Item 2:</i>   |                        |                 |                         |
| Foreign construction material                                | _____                  | _____           | _____                   |
| Domestic construction material                               | _____                  | _____           | _____                   |

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

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

- (e) United States law will apply to resolve any claim of breach of this contract.

**I.75 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2004)**

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

"Commercial item" has the meaning contained in the clause at Federal Acquisition Regulation 2.101, *Definitions*.

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

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c)
  - (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
    - (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
    - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
    - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a)).
    - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
    - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
  - (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**I.80 FAR 52.257-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
  - (1) By the Contractor under a cost-reimbursement contract; and
  - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to—  
General Services Administration  
Attn: FWA  
1800 F Street NW  
Washington, DC 20405

**I.117 FAR 52.222-8 PAYROLLS AND BASIC RECORD (DEVIATION NOV 2009)**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or

- indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
  - (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**I.128 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)**

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
    - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
      1. Negligence;
      2. Contributory negligence;
      3. Assumption of risk; or
      4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
    - (B) Any issue or defense as to charitable or governmental immunity; and
    - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
  - (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.

- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
  - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
  - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by

DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (l) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.