



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

01-PRO-173

JAN 05 2001

Mr. R. D. Hanson, President
Fluor Daniel Hanford, Inc.
Richland, Washington 99352

Dear Mr. Hanson:

CONTRACT NO. DE-AC06-96RL13200 CONTRACT MODIFICATION M126

Enclosed for your files is a fully executed original Contract Modification Number M126.

Should you have any questions, please contact me at (509) 376 8948, or Alan Hopko at
(509) 376-2031.

Sincerely,


Sally A. Steracki
Contracting Officer

PRO:AEH

Enclosure

cc: J. L. Jacobsen, FHI

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		CONTRACT ID CODE	PAGE OF PAGES 490
2. AMENDMENT/MODIFICATION NO M126	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ NO	5. PROJECT NO. (if applicable)
6. ISSUED BY U.S. Department of Energy Richland Operations Office 825 Edwin Avenue, MSIN A7-50 Richland, WA 99352	CODE	7. ADMINISTERED BY (if other than Item 6)	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP Code) Fluor Hanford, Inc. 2420 Stevens Center PO Box 1000 Richland, WA 99352		9A. AMENDMENT OF SOLICITATION NO	9B. DATED (SEE ITEM 11)
CODE		FACILITY CODE	10A. MODIFICATION OF CONTRACT/ORDER NO DE-AC06-96RL13200
			10B. DATED (SEE ITEM 13) 03/06/96

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 9 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCELERATING AND APPROPRIATION DATA (if required)

N/A \$0.00

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

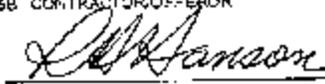
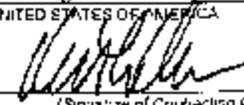
<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.132(b).
<input checked="" type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Mutual Agreement
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return 2 copies to the issuing office.

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

This modification incorporates updated language, terms and conditions. The following pages make up the current contract, including all changes agreed upon to date. All provisions of this Modification M126 shall be effective as of the day of execution by the Contracting Officer for the Department of Energy, with the exception of Section H clause, "Use of Corporate Affiliates", paragraphs B and C, and Section J, Appendix D, "Performance Based Objectives, Measures, Expectations, and Incentives", which shall be effective as of October 1, 2000. The delivery date of the Make-Or-Buy Plan referenced in Section H clause "Use of Corporate Affiliates" paragraph A, and required by Section I, DEAR 970.5215-2 "Make-Or-Buy Plan" shall be June 30, 2001.

Except as provided herein, all terms and conditions of the document referenced in Item 5B of 10A, as heretofore changed, terms reinserted and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Ron D. Hanson, President and Chief Executive Officer	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Keith A. Klein Manager
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)
15C. DATE SIGNED 12/21/00	16C. DATE SIGNED 12/21/00

PART I - THE SCHEDULE

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

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B.1 SERVICES BEING ACQUIRED

The Contractor shall be responsible for planning, managing, integrating, operating and implementing a full range of Hanford programs, projects, and other activities as set forth in Section C. The Contractor shall, in accordance with the terms of this contract, furnish all personnel, facilities, equipment, materials, supplies, and services (except as expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, performing in an efficient and effective manner all work set forth in Section C, or as may be directed by the Contracting Officer within the scope of this contract.

B.2 OBLIGATION OF FUNDS

The amount obligated by the Government with respect to this contract is \$3,847,650,879.60 as of November 30, 2000. 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 the DOE Contracting Officer.

B.3 PERIOD OF PERFORMANCE

The period of performance for the work specified in Section C of this contract shall commence on the date of the award of the contract, and continue through September 30, 2006 unless terminated sooner or reduced in term as provided for in other provisions of this contract.

B.4 ESTIMATED COST AND FEE

A. Estimated Cost and Fee

The estimated cost of the contract is the total funding provided from October 1, 1996 through September 30, 2000, (which totals \$3,742,439,599), plus an estimated budgetary funding of \$3,838,100,000 for the period October 1, 2000 through September 30, 2006, for a total estimated funding of \$7,580,539,599.

The estimated budgetary funding, including fee, for FY 2001 through FY 2006 is set forth as follows (\$ in millions):

	<u>FY01</u>	<u>FY02</u>	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	<u>Total</u>
Total Funding (including fee)	665.6	665.3	656.3	647.3	627.3	576.3	3,838.1
Fee	31.2	31.3	31.2	30.6	22.5	21.7	168.5

Total funding is defined as all funds (e.g. EM, NE, and other DOE-HQ organizations, RL, Other Hanford Contractors (net transfers), Other DOE sites, Other DOE prime contractors, Other Federal Agencies, and other Commercial entities) the Contractor receives to perform work.

B. Fee

1. Pursuant to the fee schedule above, more or less fee may be paid out in a given year, but in no case shall the paid fee exceed the fee amount in the "Total" column above.
2. Unearned fee that is not forfeited for failures to meet contract or performance-based incentive requirements shall be accrued if appropriate, or recorded as a commitment.

C. Fee Pool Adjustment

If the estimated total funding for a fiscal year in the schedule set forth above in Part A varies from the actual funding by more than plus or minus 10%, or the complexity of the workscope changes significantly, the contracting officer may adjust the total available fee pool for that year based upon the fee curves contained in the Department of Energy Acquisition Regulations.

B.5 AVAILABILITY OF APPROPRIATED 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 DOE may legally spend or obligate for such authorized purposes. Any work performed that exceeds funds currently obligated by BNR controls and specific limitations identified in Contract Modifications to Section B.2. and Distribution of Obligation Report (for individual orders of work for other DOE offices and non-DOE funded work only), without the written consent of the DOE Contracting Officer, shall be at the Contractor's risk.

B.6 SINGLE FEE

The parties formerly agreed to a single fee pool for the Contractor and its major subcontractors under Clause B.4 of this contract as originally executed. Pursuant to the Contractor's reorganization, the concept of "major subcontractor" as originally proposed is no longer applicable to this contract. The Contractor agrees that it will not charge costs to the contract representing any fee or profit for a subcontractor managing any workscope currently managed by a major subcontractor. These contractors currently are Duke Engineering Services of Hanford, Inc., Numatec Hanford Corporation, Westinghouse Safety Management Solutions (PPF contract) and Duratek Federal Services of Hanford, Inc.

B.7 OPTION EXERCISE; REDUCTION OF TERM

The period of performance for the work specified in Section C of this contract shall commence on the effective date of Modification No. M126. The term of the contract is extended for an additional five years with a contract completion date of September 30, 2006. However, if, by the end of Fiscal Year 2003, FHI fails to earn 60 percent of the incentive fee available for annual performance based incentives, the comprehensive incentive, and progress payments based on completion dates in the multi-year incentives, then FHI agrees that the term of this contract may be reduced from its current expiration date of September 30, 2006. The new expiration date shall be set at the unilateral discretion of the contracting officer. The parties agree that the contract shall expire on the new date set by the contracting officer, and shall constitute completion of the contract.

The Government's right to set an earlier contract completion date shall be in addition to the Government's rights established under FAR 52.249-6 "Termination (Cost Reimbursement)" located in Section I of this contract.

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 the River Protection Project (RPP), which entails cleanup of Hanford Site high-level waste, 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). This contract pertains to the cleanup activities associated with Project Hanford.

The Project Hanford Management Contractor ("Contractor") shall be responsible for planning, integrating, managing, and executing its projects, services, and other activities at the Hanford Site 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 Project Hanford Management Contract (PHMC) requirements.

The Contractor shall execute its projects and conduct its business in such a way as to successfully achieve the following outcomes, which flow from the Hanford Strategic Plan:

- Restore the River Corridor for multiple uses
- Transition the Central Plateau to support long-term waste management
- Use our assets to solve local, regional and global problems.

Successful achievement of the outcomes cited above shall require that the Contractor successfully accomplish the following:

- Protect worker safety and health, public safety and health, and the environment
- Provide effective leadership & management (operations and financial management)
- Provide timely and accurate management response to both internal and external Hanford customers

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 environmental, 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.

The following sections provide an overview of the projects and site-wide services considered part of the Contractor scope of work. Details are contained in the EM Site Specification, which shall be used by the Contractor in planning and executing its work. The Specification shall be maintained under configuration control and the Contract need not be modified by changes in the Specification unless those changes specifically modify the work or intent of the Contract. If any discrepancies exist between the Specification and Contract, the Contract shall prevail. *(Note: Some of the services cited below are site-wide services.)*

C.2 TRANSITION THE CENTRAL PLATEAU

This section provides an overview of the projects and site-wide services considered part of the Central Plateau scope of work. The 200 Area Plateau consists of three major outcome elements – remediation of remedial action sites and structures; treatment, storage and disposal of onsite wastes; and stabilization, storage and disposition of onsite special nuclear materials in the plutonium finishing plant complex.

C.2.1 Fast Flux Test Facility (FFTF)

The FFTF Project mission is to manage the FFTF Complex and the Fuels and Materials Examination Facility (FMEF) in a condition consistent with the Nuclear Infrastructure Programmatic Environmental Impact Statement (NI-PEIS) Record of Decision (ROD). The ROD is expected in January 2001. The NI-PEIS outlines two proposed alternatives for the FFTF: 1) restart the facility to support isotope production, Pu-238 production, and nuclear energy research and development (R&D), or 2) shutdown the facility. In either case the facilities will be maintained within the approved Authorization Agreement. Below are the major work scope activities associated with either a reactor restart or a reactor shutdown decision. The Contractor shall execute one of the following alternatives, depending upon the path forward alternative ultimately selected by the DOE.

Restart:

- Re-energize the systems that were deactivated
- Design, construct and install the system upgrades, including the Radioisotope Rapid Retrieval (R³) system
- Refuel the reactor core
- Conduct an Operational Readiness Review

Shutdown:

- Procure additional Interim Storage Casks (ISCs)
- Wash the remaining fuel and store the fuel in ISCs
- Drain the sodium from the reactor vessel, heat transport loops, and the two fuel storage vessels; store the retrieved sodium in the Sodium Storage Facility
- Shut down the auxiliary systems

Contract Period Endpoints: By September 2006 the Fast Flux Test Facility will have completed the following activities, assuming a January 2001 Record of Decision (ROD) and a flat funding profile of \$42M per year:

Continued Standby

- Complete Health of Facility work phases (three per fiscal year) while maintaining required staff.
- Complete repairs and upgrades to the Solid Waste Cask.
- Complete upgrades to the Sodium Removal System.
- Complete upgrades to the Closed Loop Ex-Vessel Handling Machine.

Restart

- Complete Health of Facility work phases (three per fiscal year) while maintaining and/or increasing required staff
- Complete the design of isotope production and retrieval equipment.
- Complete upgrades to the control systems for Closed Loop Ex-Vessel Handling Machine and Sodium Removal System and complete limited preventive and corrective maintenance on fuel handling systems.
- Develop a bottoms-up detailed cost estimate and schedule for restart.

Shutdown

- Complete Health of Facility work phases (three per fiscal year) while maintaining required staff.
- Complete secondary heat transport sodium drain, to include completing the upgrades to the Closed Loop Ex-Vessel Handling Machine.
- Complete repairs and upgrades to the Solid Waste Cask
- Complete procurement of 50% of the needed Interim Storage Casks.

- Complete procurement of the reactor vessel sodium drain pump.

C.2.2 Waste Management

The mission of the Hanford Waste Management Project is to provide safe, compliant, and cost-effective waste management services for the Hanford Site and DOB complex. These services include solid waste storage, treatment and disposal and management of liquid effluents. In addition, the Project provides crosscutting support services including waste generator services, and transportation and packaging (including shipment to the Waste Isolation Pilot Project). The Contractor shall provide waste management products and services as further described in the sections below.

C.2.2.1 Waste Disposal

The work scope addressed in this section pertains to wastes provided by Hanford Site generators as well as all offsite generators approved by RL. The Contractor shall:

- 1) Dispose of the baseline forecasted volume of DOE titled Low Level Waste (LLW).
- 2) Dispose of the baseline forecasted volume of DOE titled mixed waste
- 3) Dispose of the Department of Defense (DOD) title mixed waste provided for disposal.
- 4) Implement and support Waste Management Program Environmental Impact Statement (WMPEIS) decisions as required.
- 5) Support development and approval of the Solid Waste Environmental Impact Statement.

C.2.2.2 TRU Waste Retrieval

The Contractor shall retrieve drums of suspect TRU or RINM containers from the Low Level Burial Ground (LLBG).

C.2.2.3 Liquid Effluent Management

The Contractor shall:

- 1) Complete 242-A evaporator campaigns.
- 2) Operate 200 Treated Effluent Disposal Facility (TEDF) to meet 200 Area radiological industrial waste needs.
- 3) Maintain Liquid Effluent Retention Facility (LERF) Basin inventories.

- 4) Support other RCRA and CERCLA wastewater generators as required by RL.

C.2.2.4 Hazardous Waste

The Contractor shall maintain active commercial contracts for the commercial treatment and disposal of all Hanford Site generated Hazardous waste. Hazardous waste leaving the Hanford site for disposal must follow RL approved radiological moratorium limits. Disposal of hazardous waste in foreign countries is not authorized.

C.2.2.5 Facility Operations

The Contractor shall:

- 1) Operate the Central Waste Complex to provide safe storage of provided wastes. The CWC shall remain a contamination free facility. Operate the Waste Encapsulation and Storage Facility (225-B complex) to safely store the Cesium/Strontium (Cs/Sr) capsules.
- 2) Operate the Waste Receiving and Processing Facility (2336-W) to support waste verification, inspection, repackaging, and treatment of contact handled TRU, mixed TRU, LLW, and MLLW.
- 3) Maintain T Plant Complex capabilities to support Hanford decontamination needs, waste storage, repackaging and waste verification requirements, TRU characterization (headspace gas sampling), and waste treatment activities

C.2.2.6 TRU Waste Processing/Certification

The Contractor shall:

Certify (and process as needed) TRU Waste to WIPP requirements including, but not limited to:

1. WIPP Waste Acceptance Criteria
2. WIPP Hazardous Waste Permit
3. TRAMPAC
4. TRUPACT-II SARP
5. CAO Quality Assurance Program Document

Support of offsite generated TRU waste shall be managed per RL direction.

C.2.2.7 Generator Services and Management Activities

The Contractor shall:

- 1) Update the Solid Waste Acceptance Criteria (EP-0063) yearly. Updates will incorporate changes to the Performance Assessments, Composite analysis, Permits, and state, local, and federal laws and regulations.
- 2) Implement the requirements of the 435.1 Implementation Plan.
- 3) Update SWJFT report yearly; adjust every 6 months (at a minimum).
- 4) Support waste treatment/storage/disposal requests from all generators approved by RL.
- 5) Develop and implement a detailed strategy for processing all legacy and newly generated waste to be provided to the program by onsite and offsite generators. The strategy shall include plans to treat and dispose legacy LLW/MLW in the Central Waste Complex within the timeframe of the Strategic Options Study. Initiate technology development/special contractual needs to ensure that the waste can be treated to the above timetable. Update Waste Management Strategic Plan on a yearly basis.

C.2.2.8 High Level Waste (HLW) Management

The Contractor shall:

- 1) Maintain Waste Encapsulation and Storage Facility (225-B complex) for storage of Cs/Sr capsules until requested by ORP.
- 2) Manage the Canister Storage Building (212-II complex) Management will include SNF and ORP generated HLW.

C.2.2.9 Low Level Waste (LLW) Mixed Waste Processing

The Contractor shall:

- 1) Maintain Central Waste Complex (CWC) inventory.
- 2) Treat mixed waste each year starting in FY02 from existing inventory in the CWC or from newly generated Hanford Site Waste. All legacy waste, where treatment capacity exists, shall be treated for disposal by 2006.
- 3) Treat all existing quantities of stored CWC non-regulated LLW.
- 4) Support and implement the LDR Management plan.
- 5) All newly generated waste will be disposed within one year of treatment.

C.2.2.11 Waste Management Requirements

- 1) Changes to EP-0063 will be approved by the RL COR prior to usage. All waivers/exceptions to EP-0063 will be approved by the RL Program Office
- 2) Disposal is per EP-0063 (Solid Waste Acceptance Criteria), the Performance Assessments, and the Composite Analysis
- 3) Comply with Disposal Authorization Statement requirements, as amended
- 4) Treatment may include onsite facilities, use of other DOE facilities, commercial facilities, or any combination thereof

C.2.3 Spent Nuclear Fuel Project

The Spent Nuclear Fuel (SNF) mission supports the Hanford Site mission to clean up the Site by providing safe, cost effective, and environmentally sound management of Hanford Site SNF. Current SNF project planning relocates the fuel to interim on-site storage on the Central Plateau, initiates interim storage, and deactivates the 100 K Area facilities.

The Contractor shall implement/execute the SNF Project, which includes the following work scope:

- 1) Address all the Hanford Site spent nuclear fuel, as defined in Hanford Spent Fuel Inventory Baseline, WHC-SD-SNF-TI-001.
- 2) Manage and operate all 100-K SNF Storage Basin facilities, associated operations, and equipment continuously through facility transfer to River Corridor contractor. Perform activities at the 100 K Area until the spent nuclear fuel, debris, water, sludge, and any other material have been removed from the K Basins to a degree necessary for facility transition to the River Corridor contractor.
- 3) Manage and perform transfer and transport of all waste products from SNF related facilities to interim or final disposition facilities. Perform treatment of waste products as required.
- 4) Manage and operate all new or modified Hanford Site SNF facilities (Cold Vacuum Drying [CVD] and Canister Storage Building [CSB]) associated with receipt, stabilization, and interim storage of SNF before staging for final spent fuel disposition. Acquire SNF interim storage facilities as required.
- 5) Manage and perform transfer and transport of Hanford's non-defense production reactor spent fuels from custodian facilities to the 200E Interim Storage Area,

- 6) Manage and perform all the Hanford Site SNF stabilization, handling, and onsite transfer activities to achieve safe, interim storage in preparation for eventual SNF disposition;
- 7) Manage and perform deactivation of the K Basins and the CVD facility, and interim stabilization and storage facilities to a condition that meets requirements for transfer to the River Corridor contractor per document number SNF-4961 (Functions and Requirements for the Transition Project).

Contract Period Endpoints:

Memorandum of Agreement with receiving program to be developed documenting guidance on transfer criteria and protocol.

- Remove all spent nuclear fuel, sludge, debris (including canisters, racks, etc.) and water from K Basins.
- Deactivate CVD Facility and K Basins Facility

C.2.4 Nuclear Material Stabilization (NMS) Project

The NMS mission is to provide safe and secure storage of Special Nuclear Material (SNM), Nuclear Material (NM), and Nuclear Fuel (NF) until these materials can be transferred to another facility, sold, or dispositioned. The NMS Project is responsible for all activities associated with plutonium stabilization, deactivation, surveillance and maintenance and demolition of the Plutonium Finishing Plant (PFP).

The Contractor shall implement/manage/execute the Nuclear Material Stabilization (NMS) Project, which includes the following work scope:

- 1) Address all plutonium-bearing material that has been assigned to the NMS Project.
- 2) Manage and operate assigned facilities subsequent to transfer for final disposition.
- 3) Support the DOE and the U.S. State Department in fulfilling their nuclear non-proliferation objectives; and provide support for all on-site International Atomic Energy Agency visits and activities and nuclear material transactions
- 4) Maintain the inventory of plutonium-bearing material in safe and highly secure storage pending stabilization and/or final disposition.
- 5) Stabilize and repackage plutonium-bearing material as needed for safe, interim storage and to meet customer requirements for future reuse, long-term storage, or final disposition.
- 6) Complete all Plutonium Stabilization under DNFSB recommendations 94-1 and 2000-1 by May 31, 2004.

- 7) Ship PFP material inventory to DOE-designated locations outside the PFP complex.
- 8) Manage and perform facility stabilization activities to prepare facilities for ultimate disposition. These activities may include but are not limited to deactivation, decontamination, dismantlement, size reduction, packaging, and shipping for final disposition NMS Project process equipment, support systems, and structures. Such systems, equipment, and structures may include but are not limited to:
 - a) Process plumbing;
 - b) Chemical process systems;
 - c) Process ovens,
 - d) Transfer and transport systems;
 - e) Gloveboxes;
 - f) Filter boxes;
 - g) Ducting;
- 9) Manage and perform all waste cleanup, packaging, treatment, transport, and disposal activities in support of NMS and facility operation, stabilization, transfer, and demolition activities;
- 10) Monitor NMS associated waste sites, gaseous effluent releases, and liquid effluents not covered by the Central Plateau Facility Stabilization Project.

Contract Period Endpoints:

Stabilization:

Complete stabilization of all Plutonium (Pu) in DNFSB 94-1 and 2000-1:

- Complete solution stabilization;
- Complete polycube stabilization;
- Complete Pu residue stabilization;
- Complete Pu oxide/metals/alloys stabilization;

Deactivation:

- Complete legacy Pu holdup removal to the agreed-to base quantities and deminimus level specified in Section J, Appendix D.

C.2.5 Central Plateau Facility Stabilization Project (FSP)

The primary Central Plateau FSP mission is to stabilize contaminated facilities on the Hanford Site Central Plateau, decontaminate and decommission selected facilities, and demolish selected facilities. Facility stabilization activities may include, but are not limited to, performing characterization and survey, waste removal or stabilization, structural and geologic stabilization, surveillance and maintenance, interim operation and management, deactivation and decommissioning, and demolition activities.

The Central Plateau Facility Stabilization Project mission includes providing minimum safe surveillance and maintenance of facilities on the Central Plateau to reduce risks to workers, the public, and the environment, until they are transitioned to a low cost, long term surveillance and maintenance state and ultimately demolished.

The Contractor shall implement/manage/execute the Central Plateau FSP, which includes the following work scope:

- 1) Address all surplus facilities in the 200 Area that have been assigned to the Central Plateau FSP.
- 2) Manage and operate assigned facilities subsequent to transfer to the Central Plateau FSP and preparatory to final disposition.
- 3) Manage and perform facility stabilization activities to prepare facilities determined (by RI.) to be eligible for reuse. Such reutilization may include but not be limited to Hanford site reutilization, reutilization in support of economic development, or transfer to other governmental agency.
- 4) Manage and perform facility stabilization activities to prepare facilities for ultimate disposition or transfer to a demolition contractor.
- 5) Manage and perform all waste cleanup, packaging, treatment, transport, and disposal activities in support of facility stabilization, transfer, and demolition activities in the 200 Area for assigned facilities.
- 6) Monitor assigned 200 area waste sites, gaseous effluent releases, and liquid effluents. *Note: This excludes waste sites, gaseous effluent releases and liquid effluents assigned to Office of River Protection.*
- 7) Perform and manage 200 area groundwater monitoring well installation, maintenance, and monitoring.

Contract Period Endpoints:

Memorandum of Agreement with receiving program to be developed documenting guidance on transfer criteria and protocol.

- 224T fully characterized, (TRUSAF)
- 242 B/BI, fully deactivated
- 222U fully deactivated
- 222T fully deactivated

C.3 RESTORE THE RIVER CORRIDOR

This section provides an overview of the projects and site-wide services considered part of the River Corridor scope of work. Hanford's River Corridor area lies parallel to the Columbia River. Successful clean up of the river corridor will allow for much of the area to be available for other uses and shrink the site footprint for active Hanford clean up operations to the Central Plateau.

C.3.1 Advanced Reactors Transition (ART)

Advanced Reactors Transition consists of the NE Legacy Facilities and the 309 Building/Plutonium Recycle Test Reactor (PRTR). The NE Legacy Facilities include the 335 Building, the 3718M Building, and the 337 High Bay, all located in the southeast section of the 300 Area. The mission of the ART project is to provide surveillance and maintenance and perform deactivation of these areas.

The Contractor shall implement/manage/execute the Advanced Reactors Transition project, which includes the following work scope:

- 1) The management, operation, surveillance and maintenance of the 309 facility.
- 2) Manage the non-radioactive sodium
- 3) Manage and perform facility preparation activities to prepare facilities determined (by RL) to be eligible for reuse. Such reutilization may include but not be limited to Hanford site reutilization, reutilization in support of economic development, or transfer to other governmental agency.
- 4) Manage and perform facility stabilization activities to prepare facilities for ultimate disposition.
- 5) Manage and perform all waste cleanup, packaging, treatment, transport, and disposal activities in support of facility stabilization, transfer, and demolition activities in the ART project facilities.
- 6) Monitor waste sites, gaseous effluent releases, and liquid effluents from or related to ART project facilities.

Contract Period Endpoints:

Memorandum of Agreement with receiving program to be developed documenting guidance on transfer criteria and protocol.

Deactivate and Decontaminate the PRTR/309 Building. Activities include but are not limited to completion of:

- Cleanout and stabilization of the Fuel Transfer Pit

Complete disposition of the non-radioactive sodium. Activities to be completed include but are not limited to:

- Continue removal, treatment, packaging, and shipment of all controls and piping for final disposal

C.3.2 100 Area River Corridor Project (RCP)

The 100 Area RCP is responsible for all facility stabilization activities related to the 100 Area surplus reactor sites, the Spent Nuclear Fuel (SNF) storage basins, and SNF handling, treatment, and waste management facilities not included in Section C.2.5 above. Facility stabilization activities may include, but are not limited to, performing characterization and survey, waste removal or stabilization, structural and geologic stabilization; surveillance and maintenance, interim operation and management, deactivation and decommissioning, and demolition activities.

The Contractor shall implement/manage/execute the 100 Area RCP, which includes the following work scope:

- 1) Address all surplus facilities in the 100 Area that have been assigned to the 100 Area RCP.
- 2) Manage and operate assigned facilities subsequent to transfer to the 100 Area RCP and preparatory to final disposition.
- 3) Manage and perform facility stabilization activities to prepare facilities determined (by RL) to be eligible for reuse. Such reutilization may include but not be limited to Hanford site reutilization, reutilization in support of economic development, or transfer to other governmental agency.
- 4) Manage and perform facility stabilization activities to prepare facilities for ultimate disposition;
- 5) Manage and perform all waste cleanup, packaging, treatment, transport, and disposal activities in support of facility stabilization and transfer activities in the 100 Area for assigned facilities.

- 6) Monitor 100 area waste sites, gaseous effluent releases, and liquid effluents

Contract Period Endpoints:

Memorandum of Agreement with receiving program to be developed documenting guidance on transfer criteria and protocol.

C.3.3 300 Area River Corridor Project (RCP)

The 300 Area RCP is responsible for all facility stabilization activities not included in Section C.2.5 (Central Plateau) or C.3.1 (ART) above, in the 300 Area including: uranium disposition, clean up of former fuel supply facilities, deactivation of former research facilities and demolition of facilities. Facility stabilization activities may include, but are not limited to, performing characterization and survey, waste removal or stabilization, structural and geologic stabilization, surveillance and maintenance, interim operation and management, deactivation and decommissioning, and demolition activities.

The Contractor shall implement/manage/execute the 300 Area RCP prior to transition to an RCP contractor, which includes the following work scope:

- 1) Address all surplus facilities in the 300 Area that have been assigned to the 300 Area RCP.
- 2) Manage and operate assigned facilities subsequent to transfer to the 300 Area RCP and preparatory to final disposition.
- 3) Manage and perform facility stabilization activities to prepare facilities determined (by RL) to be eligible for reuse. Such reutilization may include but not be limited to Hanford site reutilization, reutilization in support of economic development, or transfer to other governmental agency.
- 4) Manage and perform facility stabilization activities to prepare facilities for ultimate disposition.
- 5) Manage and perform all waste cleanup, treatment, packaging, transport, and disposal activities in support of facility stabilization, transfer, and demolition activities in the 300 Area for assigned facilities. This project is also responsible for the operation and transition of the 340 Liquid Waste Handling Facility and the operation of the 310 Treated Effluent Disposal Facility (TEDF).
 - a) Operate the 310 TEDF to meet 300 Area industrial waste needs.
 - b) Maintain 310 TEDF as a non-radiological facility
- 6) Monitor assigned 300 Area waste sites, gaseous effluent releases, and liquid effluents.

Contract Period Endpoints:

Note: definitions are provided in 300 Area Accelerated Closure Plan (ACP) and only abbreviated herein at the end of this section.

Memorandum of Agreement with receiving program to be developed documenting guidance on transfer criteria and protocol.

Complete Zone D ACP activities including but not limited to:

- D&D of building/structure 3902A

Complete Zone C ACP activities including but not limited to:

- Complete 305B RCRA closure

Complete Zone F ACP activities including but not limited to:

- D&D of building/structure 3902B

Complete Zone B ACP activities including but not limited to:

- Relocation for Building 313
- D&D of building/structure 303K

Continue Zone H ACP activities including but not limited to:

- Continue deactivation of 327 building

Complete Zone K ACP activities including but not limited to:

- Continue deactivation of building 324
- Complete B-Cell mixed waste cleanout and ship waste

Miscellaneous

- Prepare and issue EE/CA #1 to cover zones D, C, B, E and G
- Complete Cultural Resource review
- Complete transfer of uranium billets to Portsmouth
- Complete disposition of contaminated fuel.
- Initiate design for utilities and infrastructure relocation.

Abbreviated ACP definitions:

Relocation: relocation of the operations and staff displaced by the accelerated closure of the 300 Area, providing any temporary facilities required to support the 300 Area, and including buy-out of Johnson Controls Inc. - owned capital equipment.

Utilities/Infrastructure: planning and construction required to supply utilities to the 300 Area buildings that will remain after execution of the 300 ACP; planning for and removal of various above-ground utilities; and the isolation and removal of utilities in support of deactivation, D&D, and remedial action.

Deactivation: includes all activities necessary to take a facility from the point at which the facility mission has been terminated and the related programs and mission staff moved from the facility, to the point at which it is ready for D&D. These activities include, but are not limited to, the identification and removal of hazardous and radioactive waste, chemicals, oils, and holdup materials, as well as all equipment/systems that can be removed without building demolition.

Decontamination and Decommissioning (D&D): includes all activities necessary to take the facility from the point at which deactivation has been completed to the point at which total demolition and removal of the facility, utilities and infrastructure, and the resulting waste and debris is complete. These activities include, but are not limited to, radiological surveys, decontamination, asbestos removal, facility demolition, waste removal, waste disposal, and site restoration.

C.4 SITE INTEGRATION AND INFRASTRUCTURE

- Management and Integration
- Information Technology
- Landlord and Site Services
 - Landlord Project
 - Site Services and Infrastructure
 - Emergency Management/Preparedness Services
 - Fire Services/Fire Protection
 - Analytical Services
- Waste Minimization
- Traffic Manager
- Environmental Monitoring
- HAMMER
- Safeguards and Security

C.4.1. Management and Integration

Provides for the management and integration activities required to ensure that all EM project work is done in a consistent, comprehensive, and integrated fashion. It includes the planning and integration activities, and information technology.

C.4.1.1. Site 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 assure the Contractor's workscope is integrated.
- 2) Support required revisions of the Hanford Strategic Plan and will participate with other DOE Prime Contractors, regulators, stakeholders, and HQ-BM, 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 the projects associated with the Contract workscope.
- 3) 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.
- 4) 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 will be updated and maintained in the Contractor's management system. 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) that will map to the Hanford EM WBS (PBS Structure).
 - (b) Implement, maintain, and integrate into management systems a comprehensive set of systems engineering principles and techniques, which supports the management and integration of workscope activities under the authority of the PHMC. The Contractors' selected approach to systems engineering should be based on best industry practices and should utilize a graded approach, as necessary. This should include, but not limited to such activities as risk analysis, mission analysis and requirements management.

- (c) 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.
 - (d) Incorporate the requirements of the National Environmental Policy Act (NEPA) into the planning process for activities covered in this Contract.
 - (e) Provide support to the DOE planning process. Conduct studies and analyses of Hanford sitewide systems and information, which supports RL's internal and external management needs. The Contractor shall provide support in (1) corporate strategic planning, (2) policy formulation, (3) management information systems development, 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
- 5) Translate specific fiscal year guidance from the Contracting Officer into direction for updating baselines of each project and site service. [Note: DOE must approve the baselines and the supporting documentation before the Contracting Officer authorizes the commencement of work]
- 6) Work responsively with DOE-RL, DOE-ORP and other site contractors to establish and maintain Interface Control Documents (ICDs) and Interface Description documents that effectively define the various interfaces (e.g. interfaces between processes, systems and facilities). These documents shall clearly define the roles and responsibilities of the various parties (DOE and Contractor) with respect to the interface. The Contractor shall, using a graded approach, maintain configuration control of these documents. The Contractor shall, as requested by DOE, provide input into interface management process documentation, establish ICDs or Memoranda of Understanding and do planning for future workscope that may be beyond the term of the current contract.

Once interface documents are established, the Contractor will comply with the interface agreements and will utilize the approved change control process to change the interface documents. DOE, as the integrator, shall be the final decision authority for any interface issue not resolved between the Contractors. Once approved, interface document requirements will be incorporated into the integrated site baseline.

C.4.1.2 Management Systems

The Contractor shall:

- 1) Establish and maintain management systems to ensure that the Contract work is managed in accordance with best business practices, 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 PHMC 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) Maintain a plan that describes the management approach and execute the Contract in accordance with the plan. The plan shall include a detailed description of the proposed management system and cover the elements required to achieve integrated technical, cost, and schedule control and reporting and employment of Best practices.

The management system shall reflect the following:

- (a) Management, control, and reporting of technical, schedule, cost, and financial elements of the Project Hanford life-cycle baseline and the supporting execution plans of project and site services activities, 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 are maintained up-to-date. These processes include the configuration baseline of all technical systems and structures, and include revision to the baseline and critical path as appropriate upon approval of changes. Any change request that impacts the Specification shall be submitted with sufficient detail to allow DOE to update it.
 - (ii) Tracking and measuring tools to provide DOE continual assessment of Contractor and subcontractor 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 DOE with cost estimates, which can be independently validated;
 - (b) Provide DOE with appropriate integrated financial, schedule, and critical path analysis, and activity tracking data to effectively manage their baselines 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. Information systems should be compatible with DOE Integrated Planning, Accountability, and Budgeting System Information System. Identify and maintain configuration control of all data source systems that feed cost, schedule, technical, financial and waste reporting systems.
 - (d) Enhance the ability to accommodate electronic transfer of data between a diverse set of hardware, software, and communication 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 a comprehensive management and technical oversight program that demonstrates through objective evidence that management at all levels is routinely and actively engaged in verifying that resources are efficiently utilized. Maintain a corrective action program, including tracking of issues thus developed and lessons-learned program effectiveness.
- 4) Maintain a configuration management system based on industry consensus standards, which with other management tools, such as change control, assures a sound technical basis for the PIIMC life-cycle baseline. Configuration Management will be specifically addressed in the management and integration plan as part of the integrated management system.

- 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.

C.4.1.3 Manage and Integrate Resources

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

- 1) Support the annual budget submission process by working with DOE and other prime contractors to develop budget formulation documentation
- 2) Be responsible for optimal integration of their assigned workscope. This integration includes coordination with other site contractors, preparation of required documentation, and loading of data into required DOE information systems to support DOE planning and budget cycles. Where specifically assigned, the Contractor shall also support DOE in integration of sitewide planning and budget documentation.
- 3) Provide leadership, project, and personnel management skills necessary to ensure compliance with the Hanford Site 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.
- 4) Use the existing "People Core" system at the Hanford Site to enhance human resources functions site wide.

C.4.1.4 Information Technology (IT):

The Contractor shall:

- 1) Provide IT services (e.g., strategic planning, management, architecture development, operations, etc.) consistent with commercial practices where appropriate
- 2) Integrate IT services with site and project mission requirements.

- 3) Adapt IT support services on the site in a timely manner to meet the mission and IT needs of the Hanford Site

IT services include but not be limited to:

- Wireless Systems Technology (pagers, radios, micro-wave, associated transmitting towers and video teleconferencing)
- Cellular System (cellular phones)
- Telephone Switch and Relay Nodes (Integrated Voice Data Telecommunications System)
- Fiber Optics and Twisted Pair cabling
- Help Desk (data systems [software] assistance center)
- Desktop Services (data systems [hardware] assistance center)
- Data Systems Network (includes servers and related equipment)
- Data Systems Security (software and policy management)
- Data Systems Development (software development and maintenance of all software applications)
- Printing and Reproduction Services
- Records Management (historical records management and storage)
- Graphics (graphics support for posters, presentations and briefings)
- Video Services
- Photographic Services (photographs of site events and management of historical photo archive)
- Audio Services (operates audio control for briefings)
- Web Page Development

C.4.2 Landlord and Site Services

The Contractor shall provide the site services described in the following sections. The services shall be provided in a manner such that all site prime contractors are treated fairly and equitably. Services shall be timely, cost-efficient, of high quality, and consistent with site wide mission needs.

C.4.2.1 Landlord Project

The Contractor shall:

- 1) Manage the project in support of major maintenance or replacement and final closure of general infrastructure
- 2) Provide and manage site integrated biological control and mapping services.

Major facilities/systems include Steam, water, liquid sanitary waste, electrical distribution, telecommunication, sanitary landfill, emergency services, general-purpose facilities, patrol training center, site roads, site land and PNNL dosimetry facilities.

C.4.2.2 Site Services and Infrastructure

The Contractor shall:

- 1) Provide and maintain the site services and infrastructure necessary to support all Hanford missions.
- 2) Operate all related facilities until they are demolished or transferred.

Site wide services include but are not limited to: water, electrical, sanitary sewer, transportation, crane and rigging, custodial services, mail services, labs, engineering labs, energy management and solid waste disposal

C.4.2.3 Emergency Management/Preparedness Services

The Contractor shall:

- 1) Provide technical and administrative emergency management services to Hanford Emergency Preparedness. The work scope includes:
 - (a) Maintaining the Hanford Emergency Management Plan and Implementing Procedures.
 - (b) Managing the Hanford Site Emergency Exercise Program.
 - (c) Maintaining the Site emergency response organization and facilities.
 - (d) Training site emergency response organization members
 - (e) Assisting RL in program management and Hanford contractor overview.
 - (f) Assisting in the offsite interface program.
 - (g) Assisting with the emergency public information program.
- 2) Provide an emergency response capability for facilities under its control that implements the Hanford Emergency Management Plan (DOE/RL-94-02) as modified from time to time.

C.4.2.4 Fire Services and Fire Protection

The Contractor shall:

- 1) Maintain the Hanford Fire Department (HFD) to support the safe and timely cleanup of the Hanford Site. This includes fire suppression, fire prevention, emergency rescue, emergency medical service, and hazardous materials response; and the capability of dealing with and terminating emergency situations which could threaten the operations, employees, the general public, or interests of the U. S. Department of Energy (DOE) operated Hanford Site. It also includes response to surrounding fire departments/districts under mutual aid and state mobilization agreements and fire fighting, hazardous materials, and ambulance support to

Energy Northwest (ENW) and various commercial entities operating on-site through Requests for Service from RL.

- 2) Provide site fire marshal overview authority, fire system testing and maintenance, respiratory protection services, building tours and inspections, ignitable and reactive waste site inspections, pre-fire planning, hazardous chemical inventory updates, and employee fire prevention education.
- 3) Maintain an acceptable fire protection program which supports a level of fire protection and fire suppression capability sufficient to minimize losses from fire and related hazards consistent with protected property benchmark performance in private industry.

C.4.2.5 Analytical Services

The Contractor shall

- 1) Provide analytical services consistent with commercial practices where appropriate.
- 2) Integrate analytical services with site and project mission requirements
- 3) Analytical support services on the site should be responsive to the mission of the Hanford Site.
- 4) Operate and maintain WSCF and 222S facilities.
- 5) Maintain a commercial source laboratory capability for Hanford wide use and sample management for Contractor work under the contracts.
- 6) Provide client support for analytical services to Hanford mission and infrastructure elements.
- 7) Maintain laboratory accreditation for on-site labs as needed
- 8) Support RL in integration of analytical services for the site, establishment of Site analytical quality standards, and strategic planning, including collection of sample projections from all onsite contractors.
- 9) Provide waste and environmental sample analysis, process control support, field and sampling services, and expertise in chemistry and data quality to support the Hanford Site cleanup mission.
- 10) Include client services (support to Data Quality Objectives process, development of Statements of Work, pricing, work tracking), support to maintenance of Site analytical quality standards, and maintenance of commercial contracts (billing, auditing, data management) which are accessible by other Site contractors.

C.4.3 Waste Minimization

The Contractor shall:

- 1) Develop and implement a pollution prevention program incorporating waste prevention, recycling, reuse, and affirmative procurement program

- 2) Establish waste reduction goals for transuranic, low-level waste, low-level mixed, sanitary, and clean-up stabilization wastes.

C.4.4 Traffic Manager

The Contractor shall:

- 1) Serve as the Site Traffic Manager by coordinating onsite and offsite shipments.
- 2) Serve as the agent for the Government as designated shipper for the site.
- 3) Manage overnight small package delivery.
- 4) Manage export/import/services with U.S. Customs and freight rate negotiations with carriers.
- 5) Relocate household goods for site personnel related to the work performed by the Contractor and subcontractors under this contract.

C.4.5 Environmental Monitoring

PNNL monitors the Hanford and surrounding environment to assure public safety and Hanford Site ecological and cultural resources. This includes providing forecasting and real time localized weather information for routine operations and emergency responses, performing for field Hanford Site and off-site environmental monitoring, and assessing radiological exposure to the public and environment.

PNNL is responsible for the 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:

- 1) Manage its facilities and operable units to assure compliance with environmental requirements and agreements. This management requirement includes providing legally and regulatory required air and liquid effluent and near facility environmental monitoring.
- 2) Collect, compile, and/or integrate air and liquid effluent monitoring data from operations and activities under its control and from other Hanford Site contractors.
- 3) Compare the monitoring data with regulatory and/or permit standards and provide reports to the other contractors for their use in assessing compliance with the standards. The data shall also be compiled, collated, and/or consolidated, as necessary, into the mandatory State and Federal environmental reports for the Hanford Site.

- 4) Provide appropriate environmental data for its facilities and operable units to support Hanford Site assessments and preparation for the Hanford Site Environmental Report.
- 5) Maintain regulatory capability to ensure that compliance for their facilities and operable units is maintained, for the groundwater monitoring program by PNNL.

C.4.6 **HAMMER (Hazardous Materials Management and Emergency Response)**

The Volpentest HAMMER Training and Education Center is a national hands-on training and education center designed to prepare workers and emergency responders to safely perform tasks, especially those that are high-risk and employ the latest technology. Provisions incorporated within the National Defense Authorization Act for Fiscal Year 1994 authorized the Secretary of Energy to establish regional training centers to provide hazardous materials management and emergency response (HAMMER) training centers at the Department of Energy Sites. The facility hosts, brokers, and integrates the capabilities of its partnering organizations to ensure the delivery of state-of-the-art training and educational curricula. The congressional language associated with the National Defense Authorization Act for Fiscal Year 1994 specifically addresses the use of HAMMER by police and fire departments and other regional emergency response agencies. In 1998, the Law Enforcement and Security Training Center (LESTC) was combined with HAMMER to increase economies of scale and promote more cost-effective operations and maintenance. The joining of the LESTC with HAMMER also better aligns HAMMER in its efforts to provide state of the art facilities and training for police agencies.

The Contractor Shall:

- 1) Manage, operate and maintain the Volpentest HAMMER Training and Education Center to provide training and education programs for hazardous material, waste management, and emergency response to Hanford workers as a first priority but also for workers nationwide. Continue substantial partnerships with HAMMER stakeholders in the management of HAMMER.
- 2) Develop and implement a business plan that addresses full cost recovery and increased use of props, and propose innovative application of Hanford support costs such that HAMMER is competitive with other training programs.
- 3) Manage, operate and maintain the Law Enforcement and Security Training Center (as an integral part of HAMMER) in such a manner that the Hanford Site's protective force, Hanford Patrol, has first priority in the use of the facilities/ranges to meet mandated training.
- 4) Coordinate and schedule offsite law enforcement and private security entities to utilize excess capacity of the Law Enforcement and Security Training Center as

allowed in item 3 above. Develop and implement a business plan for the LESTC consistent with item 2 above.

C.4.7 Safeguards & Security

The Contractor shall:

- 1) Ensure appropriate levels of protection against unauthorized access; theft, diversion, loss of custody of Special Nuclear Material, espionage; loss or theft of classified matter or Government property, and other hostile acts that may cause unacceptable adverse impacts on national security or the health and safety of DOE and contractor employees, the public, or the environment.
- 2) Promptly prepare and submit applications for security clearances as required for work under this contract.
- 3) Deter, prevent, detect, and respond to unauthorized possession, use, or sabotage of Special Nuclear Materials
- 4) Provide an integrated system of activities, systems, programs, facilities, and policies for the protection of classified information, nuclear materials, and DOE and certain DOE contractor property and personnel as required by the Atomic Energy Act of 1954, as amended, other Federal statutes, Executive orders, and other directives.
- 5) Manage, operate, and integrate all safeguards and security services of the Hanford Site, except PNNL. This includes information security, cyber security, and the Hanford Patrol and K-9 teams. Hanford Patrol provides sitewide protective force services, including for Government assets of the PNNL. The K-9 force may be made available on a non-mission interference basis to local and regional police departments and to school systems in response to threats of violence.
- 6) Selection of the Contractor's Director of Safeguards and Security and Chief of Hanford Patrol will be subject to RL approval.

These provided services must interface directly with RL, and in the event of an emergency involving the Site safeguards and security forces, RL may assume command and control of the forces and the event, if the Emergency Operations Center is activated

C.5 OTHER WORK SCOPE

This Contract contains other work scope not solely associated with the River Corridor, Central Plateau, or Site Integration and Infrastructure scopes of work. The work scopes addressed in this section are primarily crosscutting services that have application site wide. The work scope covered in this section includes:

- Legal Services and Litigation Management
- Radiological Assistance Program
- Science and Technology Planning and Integration Management
- Economic Transition
- Land Use/Stewardship
- Public Relations and Media Support
- Employee Concerns Program
- Training
- Environment, Safety, Health and Quality (ESH&Q)
- Architect Engineer/Construction Management

C.5.1 Legal Services and Litigation Management

The Contractor shall maintain a legal function and demonstrate sound litigation management practices to include alternate dispute resolution activities, litigation, arbitration, legal advice on environmental matters, procurement, employment, labor, worker's compensation, and Price-Anderson Act (PAA); review and interpretation of legislation and laws; research and drafting memorandum, and the management and oversight of outside legal counsel for both the prime and subcontractors.

The Contractor shall provide litigation support to the Government when requested in writing by the Contracting Officer (or Contracting Officer Representative) in cases of actual or threatened litigation, regulatory matters, or third-party claims and subject to applicable rules and regulations

Litigation support includes, but is not limited to: Negotiations, case preparation assistance, document retrieval, review and reproduction, witness preparation and testimony; expert witness testimony; and assisting Government counsel as necessary in response to discovery or other information related activities responsive to any legal proceeding, including legal support for any negotiations, disputes, appeals or court actions under the Tri-Party Agreement or other environmental matters such as permitting or regulatory compliance issues.

C.5.1.1 Legal Services and Litigation Management Requirements

- Litigation management practices shall be provided in accordance with the RL approved Litigation Management Plan.
- Utilize Department of Energy, Office of General Counsel, Legal Services and Litigation Management Policies and Procedures.

C.5.2 Radiological Assistance Program (RAP)

The Contractor shall provide support under the Radiological Assistance Program (RAP) until DOE terminates the RAP program.

C.5.3 Science and Technology Planning and Integration Management

The technology management process established by DOE provides the framework to identify technology needs and develop effective, acceptable solutions. This process identifies areas of highest technical risk and uncertainty, aligns technology investments with the areas of highest risk, seeks out and applies innovative technical solutions, provides linkages with the national science and technology programs. This effort to continuously improve the scientific, technical, and engineering analyses of site baseline activities enables the identification of opportunities to reduce expensive baseline options as well as reduce risk to the programs, worker, and to the public.

The Contractor Shall:

- 1) Plan and integrate the application of science and technology (S&T) directly into projects and services described in Section C.2 and C.3 to reduce schedule, cost and/or risk by:
 - a) Conducting science and technology reviews to identify areas of highest technical risk and uncertainty;
 - b) Aligning technology investments with the areas of highest risk;
 - c) Developing near and long term mitigation plans (e.g. S&T roadmaps, S&T plans, technology insertion points, and S&T needs),
 - d) Seeking and applying innovative technical solutions consistent with mitigation plans;
 - e) Tracking demonstrations and deployments of new or innovative technologies;
 - f) Developing, implementing, and managing a plan to track the application of scientific knowledge and its impact on Hanford cleanup decisions.
- 2) Manage annual resources for the integration of workscope conducted by contractors funded by DOE National Programs (i.e. Office of Science and Technology, Pollution Prevention/Waste Minimization Programs) and in support of projects and services described in Sections C.2 and C.3.
- 3) Co-lead with DOE, the Hanford Site Technology Coordination Group (STCG) Management Council and Subgroups.
- 4) Communicate and cooperate with the DOE National Office of Science and Technology Program (e.g. RL, HQ, Focus Areas, Hanford Site Contractors, National Laboratories) and build partnerships with the science and technology community.

C.5.4 Economic Transition

The Contractor shall:

- 1) Maintain and operate the database of potentially available Hanford equipment and facilities.
- 2) Complete implementation of and maintain the inventory process that identifies and makes available assets which have economic value.
- 3) Support asset transfers from the Site to potential customers via the Tri-Cities Asset Reinvestment Corporation (TARC)
- 4) Ensure that all DOE assets released or made available for private use are characterized and radiologically released in accordance with DOE approved asset management and release programs.
- 5) Ensure that documentation associated with releases of assets or use of underutilized assets on a non-interfering basis are developed and maintained in accordance with DOE-approved records management systems.
- 6) Work with PNNL to implement technology transfer and intellectual property management programs as related to DOE Environmental Management clean up mission.
- 7) Support academic programs at Columbia Basin College and Washington State University that are related to DOE Environmental Management clean up mission

C.5.5 Land Use/Stewardship

The Contractor shall utilize the principles of good land stewardship which include appropriate actions under the Hanford Site Biological Resources Management Plan (DOE/RI. 96-32) and the current draft Hanford Site Cultural Resources Management Plan and/or their subsequent revisions to assure that all cultural and biological resources are properly protected for potential inclusion into the Hanford Reach National Monument.

C.5.6 Public Relations and Media Support

The Contractor shall provide a wide range of communications support to include, but not be limited to, media relations, printed materials, electronic products (including audio, video and CD productions), the Hanford homepage, public participation and outreach (including the Hanford Advisory Board), tours, employee communications, and emergency preparedness planning and execution.

C.5.6.1 Public Relations and Media Support Requirements

- Press releases and media briefings are coordinated with RL and are factual, proactive, and incorporate the Hanford "brand" and/or outcomes when appropriate as determined by RL.
- Publications and websites are developed in consultation with RL and shall include the Hanford brand and/or outcomes, are factual, cost-effective, and user-friendly (i.e. written to be understandable to the intended audience) and are distributed to appropriate stakeholders and others.
- All communications activities comply with the DOE Openness Policy and the Public Involvement Policy.
- In partnership with RL, the Contractor shall periodically update an integrated communications plan, coordinating to the extent possible with ORP and other contractors.
- The Contractor shall communicate to the extent practical with contractor/subcontractor employees before or simultaneously with outside media or stakeholders when issuing new items.
- At DOE's direction, the Contractor shall oversee preparation and production of The Hanford Reach, ensuring it fairly covers all site contractors and helps align the workforce to achieve the cleanup outcomes.
- The Contractor shall ensure that interactions with Tribal Nations are open, up-front, and often, and that these interactions are thoroughly coordinated with the RL Indian Nations Program manager.
- The Contractor shall fully and completely coordinate with the RL Intergovernmental Affairs manager on interactions with Congressional, state, local government, and elected officials regarding its contract scope.
- At DOE's direction, the contractor shall provide logistical and other support for the Hanford Advisory Board and other public meetings.
- The Contractor shall provide a timely, accurate, thorough and detailed response to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements. The contractor should err on the side of openness and full disclosure to comply with these Acts.
- The Contractor shall provide support for emergency communications activities, including ensuring well-trained staff are available for all pertinent positions in the JIC or EOC for an extended emergency.
- The Contractor shall support tours of the site, including transportation, food/beverages, tour guides, etc. as requested by DOE.

C.5.7 Employee Concerns Program

The Contractor shall:

- 1) Resolve employee concerns (including complaints of harassment, intimidation, retaliation and discrimination) at the appropriate level.

- 2) Support and provide cooperative membership in an approved "appeals avenue/forum" for resolving significant employee concerns (examples include: environment, safety, health, and quality).
- 3) Review and make recommendation to DOE to make the charter and processes of the "appeals avenue/forum" consistent with this contract. The continued need for the "appeals avenue/forum" shall be reviewed annually and recommendations submitted to DOE for decision.

C.5.8 Training

The Contractor shall develop, implement and manage a training program that maintains a qualified workforce in sufficient numbers and skill levels to meet the Hanford Site requirements and fulfills FHI and its subcontractors need to comply with DOE orders and other Federal Statutes.

C.5.9 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.

The Contractor shall:

- 1) Take necessary actions to prevent fatalities and minimize injuries/illnesses and prevent radiological or chemical exposures to workers and environmental releases in excess of established limits
- 2) Establish clear environmental, safety, health and quality expectations through the ISMS plans and priorities. Manage activities in proactive ways, including visible management field presence that effectively and efficiently protects the environment, public and worker safety and health, and ensures 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 tenets 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.

- 6) Maintain an Integrated Safety Management System (ISMS) that utilizes DOE's VPP tenants as key components of maintaining and nurturing ISM
- 7) Maintain an ISMS system description and submit appropriate changes to the Contracting Officer.
- 8) Maintain 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
- 9) Maintain in accordance with ISMS, 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."
- 10) Maintain an organization that supports effective ESH&Q management by ensuring appropriate levels of staffing and competence.
- 11) Maintain disciplined self-assessment, feedback, continuous improvement processes, and conduct of operations discipline in the performance of all work.
- 12) Maintain a program to track and address environmental compliance issues and implementation requirements (including but not limited to permitting, environmental reporting, Consent Decrees, Tri-Party Agreement reporting/management, NEPA, pollution prevention, waste minimization).
- 13) Recommend and implement ESH&Q performance measures in accordance with the ISMS to monitor the effectiveness of the implementation of ESH&Q programs.
- 14) Occupational Health Services are currently provided to the Hanford Site by the Hanford Environmental Health Foundation (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.

- 15) 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 DOE.
- 16) Implement, maintain and improve the PHMC Nuclear Safety Authorization Basis in support of safe, effective, and efficient work accomplishment.
- 17) Provide Material Safety Data Sheet management services for the PHMC, CHG, RL and HEHF.
- 18) Demonstrate effective conduct of engineering and conduct of operations principles and practices

C.5.9.1 Nuclear Criticality Safety

The Contractor shall maintain a nuclear Criticality Safety Program which ensures that operations with fissionable materials which pose a criticality accident hazard shall be evaluated and documented to demonstrate that the operation will be sub critical under both normal and credible abnormal conditions. Fissionable material operations shall be conducted in such a manner that consequences to personal and property that result from a criticality accident will be mitigated. No single credible event or failure shall result in a criticality accident having unmitigated consequences.

C.5.9.2 Nuclear Safety

The Contractor shall develop and maintain the safety analysis and controls for nuclear facilities, operations, and activities. Readiness determinations for restart of activities and for start-up of new activities will be required to demonstrate readiness to safely start the activity.

C.5.9.3 Occupational Safety

The Contractor shall meet all occupational safety and health requirements (including but not limited to industrial safety, fire protection, construction safety, firearms safety, explosive safety, industrial hygiene, pressure safety and motor vehicle safety) for all site-related operations and conditions.

C.5.9.4 Quality Assurance Program

The Contractor shall perform all work on site in accordance with applicable quality assurance requirements.

C.5.9.4.1 Quality Assurance Program Requirements

- For site activities where transuranic waste will be characterized, packaged, or shipped, the DOE Carlsbad Area Office Quality Assurance Program Document, CAO-94-9-1012 shall apply.
- The Nevada Test Site Waste Acceptance Criteria shall apply for those activities where Low Level Waste is characterized, certified, packaged or shipped.

C.5.10 Architect Engineer/Construction Management

The Contractor shall provide Architect Engineer (AE) services necessary to accomplish the scope of work. The Contractor shall retain a minimal in-house capability to provide core design services of a recurring nature, to maintain Hanford Site engineering standards and ensure they are integrated with other site contractors, and to provide oversight of subcontracted AE services to ensure they meet Hanford Site and Contractor standards and requirements. The Contractor shall utilize fixed-price contracting for AE services to the maximum extent practicable and consistent with Make-Buy plan.

The Contractor shall provide Construction and Construction Management services necessary to accomplish the scope of work. The Contractor shall retain a minimal in-house capability to maintain Hanford Site construction standards (e.g. hoisting and rigging standards, site excavation safety coordination, construction labor relations, etc.) and ensure they are integrated with other Hanford Site contractors, and to provide oversight of subcontracted Construction and Construction Management services to ensure they meet Hanford Site and Contractor standards and requirements. The Contractor shall utilize fixed-price contracting for Construction and Construction Management services to the maximum extent practicable and consistent with Make-Buy plan.

The Contractor shall provide an independent construction acceptance inspection service within its organization to support Government inspection of construction performed on the Hanford Site. As requested by DOE, this service shall be available to support Government inspection of construction performed by all Hanford Site contractors

The Contractor shall continually assess the current and prospective requirements for AE, Construction, and Construction Management services in order to provide those services in the most efficient and cost effective manner. The Contractor shall maintain accountability and ensure that a centralized control of these services is retained within its organizational structure. In accordance with DOE direction, the Contractor shall ensure that AE, Construction and Construction Management services resources under this Contract are available to all site contractors and directly accessible to them.

C.6 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 work with the other Prime Contractors 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.

C.6.1 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 contracts 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.

C.6.2 Hanford Environmental Health Foundation (HEHF)

The Hanford Environmental Health Foundation (HEHF), under a separate prime contract, manages the Site Occupational Medical Contract 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.

C.6.3 CH2M HILL Hanford Group, Inc. (CHG)

CH2M HILL Hanford Group (CHG), under a separate prime contract to DOE as managed by the Office of River Protection, is responsible for managing the River Protection Project. CHG is responsible for safely managing and retrieving for disposal the radioactive waste stored in 177 underground tanks and related facilities.

C.6.4 Bechtel Hanford Incorporated (BHI)

Bechtel Hanford Incorporated (BHI), under a separate prime contract, is the Environmental Restoration Contractor at the Hanford Site. 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.

C.6.5 Johnson Controls Incorporated (JCI)

Johnson Controls Incorporated (JCI), under a separate prime contract, is responsible for the Energy Savings Performance Contract, which currently includes steam service. JCI can also propose additional energy conservation measures. These may include but are not limited to lighting system upgrades; pumping system upgrades; automation; heating, ventilation, and air conditioning upgrade; and addition of Utility Monitoring and Control Systems.

C.7 POTENTIAL WITHDRAWAL OF WORK

In anticipation of exercising its rights pursuant to the clause entitled, "Withdrawal of Work," contained in Section H of this contract, DOE has identified the following scope of work for withdrawal from this contract:

(1) Information Technology (IT), identified as the following:

- IT Strategic Planning and Management (Architecture development and management)
- Wireless Systems Technology (pagers, radios, micro-wave, associated transmitting towers and video teleconferencing)
- Cellular System (cellular phones)
- Telephone Switch and Relay Nodes (Integrated Voice Data Telecommunications System)
- Fiber Optics and Twisted Pair Cabling
- Help Desk (data systems [software] assistance center)
- Desktop Services (data systems [hardware] assistance center)
- Data Systems Network (includes servers and related equipment)
- Data Systems Security (software and policy management)
- Data Systems Development (software development and maintenance of all software applications)
- Web Page Development

It is currently anticipated this scope of work will be withdrawn on or around March 31, 2002.

(2) All Contractor 300 Area Scope.

It is currently anticipated that the scope of work (as described in C.2 above) will be withdrawn on or around June 30, 2002.

(3) HAMMER

It is currently anticipated that this scope of work will be withdrawn on or around October 1, 2001.

The Contractor shall cooperate with and assist the government in facilitating the withdrawal of work and in providing a smooth transition to the successor contractors.

Nothing herein is intended to limit DOE's exercise of the Withdrawal of Work clause to the scopes of work identified above, nor is the Withdrawal of Work intended to be limited to the time frames identified above. The above areas and the time frames for Withdrawal of Work are anticipated only and provided for informational purposes.

C.8 POTENTIAL ADDITION OF WORK

It is anticipated that DOE will exercise its rights pursuant to the clause entitled, "Optional Services," contained in Section B of this contract to add to this contract the 200 Area scope of work currently being performed by Bechtel Hanford, Inc. Operation of the Environmental Restoration Disposal Facility (ERDF) is excluded from this scope transfer. Additionally, DOE will transfer 600 Area scope currently performed by Bechtel Hanford, Inc. that will not be part of the River Corridor closure project to this contract (e.g., 618-11 burial ground, etc.).

Current candidate facilities for 200 Area transfer include, but are not limited to: 233S, 224B, 212N, 212P, and 212R.

Current candidate waste sites for Central Plateau transfer include, but are not limited to: 618-11 burial ground, 618-10 burial ground, and Gable Mountain Ponds.

The Hanford Site consolidated Groundwater Management Project has the overall goals of (1) focusing on remediation of groundwater, and (2) long-term protection of groundwater resources.

Remediation of contaminated groundwater generally consists of groundwater extraction, surface treatment, and reinjection into the aquifer. Remediation of contamination using soil vapor extraction and in-situ treatment barriers is also included within this scope, along with well installation, well maintenance, and well abandonment. The Groundwater

Remediation Project is separated into three major areas: 100 Area Groundwater, 200 Area Groundwater, and Hanford Site Groundwater Management.

Not included within this scope are PNNL monitoring network design, sampling, and sample collection, sample analyses, hydrologic characterization, data evaluation, and reporting for RCRA, CERCLA, and site-wide and operational activities. Seismic monitoring, vadose monitoring, and groundwater modeling are also included in the PNNL scope, and not in this work scope.

The Hanford Site Groundwater/Vadose Zone (GW/VZ) Integration Project is to develop the technical capability and scientific information to perform site-wide risk assessments and manage the current and predicted ground and surface water contamination remediation. The project will provide information to assist key decisions by regulators and DOE in the selection of cleanup goals and technologies.

It is currently anticipated this scope of work will be added to this contract on or around June 30, 2002.

C.9 TRANSFER AND TRANSITION OF WORK SCOPE

Transfer of Work:

The DOE and Contractor recognize that under other terms of the Contract clauses titled "Withdrawal of Work" and "Optional Services" the DOE may exercise its rights to modify this Statement of Work. The DOE and Contractor agree to negotiate a reasonable transition period for each change to minimize the impact on existing work being performed.

Contract Transition:

The DOE and Contractor recognize that prior to the end of the Contractor's performance period, a transition period will be necessary to allow a transition to a new Contractor. The Contractor agrees to work with the DOE to establish an acceptable transition plan that supports the new Contractor in assuming their Contract responsibilities. The DOE agrees that any requirements placed upon the incumbent Contractor to perform any transition activities should not impact funding or the Contractor's ability to earn a fee

PART I - THE SCHEDULE

SECTION D
PACKAGING AND MARKING

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SECTION D

PACKAGING AND MARKING

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 which 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.

PART I - THE SCHEDULE

**SECTION E
INSPECTION AND ACCEPTANCE**

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SECTION E

INSPECTION AND ACCEPTANCE

E.1 FAR 52.246-5 INSPECTION OF SERVICES -- COST-REIMBURSEMENT (APR 1984)

A. Definitions

"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 re performance, 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.

E.2 INSPECTION

Inspection of all products, reports, or services under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR) identified by the Contracting Officer as responsible for the product, report, or service being delivered, or any other duly authorized Government representative as designated in writing from time to time by the Contracting Officer, in accordance with Section G of this document.

E.3 ACCEPTANCE

Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated representative, as designated in writing from time to time by the Contracting Officer.

PART I - THE SCHEDULE

**SECTION F
DELIVERIES OR PERFORMANCE**

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SECTION F

DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

The period of performance for the work specified in Section C of this contract shall commence on October 1, 2001 and continue through September 30, 2006, (but not to exceed September 30, 2006) unless sooner terminated or reduced as provided for in other provisions of this contract.

F.2 PRINCIPAL PLACE OF PERFORMANCE

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

F.3 DELIVERIES

All products, reports, or services under this contract shall be delivered to the Contracting Officer shown in Section G, subsection G.2, or any other duly authorized Government representative, as designated in writing by the Contracting Officer.

F.4 REPORTING REQUIREMENTS

A. The Contractor shall develop a reporting system that will provide management information in the form of electronic data bases 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 all PHMC work and PHMC site support activities; performance status and analysis information, including technical, cost, schedule, and funding management; data; and identification of relevant issues to DOE Richland Operations Office (RL).

- (1) The contractor shall prepare a monthly progress report which will be used in performance review meetings with DOE. The report shall include:
- a) A statused summary logic schedule of key contractor workscope. The schedule should include DOE and Tri-Party Agreement (TPA) milestones.
 - b) Cost reporting which identifies 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 should be in work breakdown structure (WBS) format and funding data should be compatible with the WBS and the DOE budget and reporting classification structure.
- c) Cost and schedule variance which exceed thresholds specified by RL 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. The variance analyses should address impacts to DOE and TPA milestones.
 - d) Key issues requiring RL or Contractor action(s).
- (2) Each major project (e.g. SNF, PFP, etc) shall conduct a monthly progress review with RL counterparts. Information to be addressed is similar to that identified in item 1 above, except that the information is specific to the major project.
 - (3) The Contractor is responsible for integrating reporting from its Subcontractors and other site contractors in a timely manner so that all data bases and reporting is available to RL no later than 10 working days after the close of the accounting month.
 - (4) The Contractor shall provide the information necessary to support DOE in the preparation of reports required by regulatory agreements as the TPA and legislative mandates such as Life Cycle Environmental Liability. DOE Headquarters also requires specific data reported to it such as the Integrated Planning, Accountability and Budgeting System/Project Execution Module (IPABS/PEM) which must be supported by the reporting system.
- 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. DOE'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.

- E. The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described above. The Contractor shall include this requirement in all major subcontracts.

REPORT REQUIREMENTS

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 or delegated Representative. The distribution list will be determined by the Contracting Officer. Also, the content and format requirements will be determined by the Contracting Officer.

<u>Report Name</u>	<u>Frequency</u>
Management and Integration Plan (Now HNF-MP-001)	Y
Work Breakdown Structure (WBS)(Through HANDI)	Y,C
WBS Description (MYWPs fed from Hanford Site Technical Document)	Y,C
Richland Operations Summary Schedule	Y,C
Contractor Integrated Priority List	Y,A
Environmental Management Performance Report	M
Project Execution Module (PEM)	M
Contract Funds Status Report	M
Financial Statements Narrative and Footnote Analysis (Electronic data files/narratives)	Y
Depreciation Charges	M
DMS Report	M
Disclosure Statement	Y
Cost Accounting System Change Reports	A
Functional Cost Report	A
Outlay Estimates by Appropriation Report	Q
FIVRS Cost Estimating reports	A
Report of Compensation	S
Report of Contractor Hours and Earnings	S
Report of Contractors Expenditures for Supplementary Compensation	S
Monthly Invoice	M
Deferred and Annual Maintenance Cost Data	A
Indirect Cost Management Status Report	Q
Pension Plan Actuarial Data	Y
Utilization and Disposal of Excess & Surplus Personal Property	Y
Negotiated Sales Report (Property)	Y

Personal Property Furnished to Non-Federal Recipients	Y
Summary of Fire and Other Property Damage Experience	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 Awards

PART I - THE SCHEDULE

**SECTION G
CONTRACT ADMINISTRATION DATA**

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SECTION G

CONTRACT ADMINISTRATION DATA

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).

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)

G.2 CONTRACT ADMINISTRATION

The DOE Contracting Officer and correspondence address is:

Sally A. Sieracki, Contracting Officer
U.S. Department of Energy
Richland Operations Office
Procurement Services Division, MSIN A7-80
P.O. Box 550
Richland, WA 99352

G.3 BILLING INSTRUCTIONS

- A. The Contractor shall provide monthly electronic invoices (or data supporting letter of credit drawdowns) and cost accrual and accrual reversal records to RL. Within the electronic invoice submission, the contractor shall provide all invoice data elements required to: a) determine that all costs invoiced by the contractor were necessary 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, Activity Data Sheet (ADS), Project Baseline Summaries (PBS) numbers, the fiscal year the funds were provided, the RL 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 written documentation to support the electronic invoices to the RL Contracting Officer or his/her designate at the address identified in Section G.2.
- C. APPLICABLE TO THE CH2M HILL Hanford Group (CHG) PRIME CONTRACT

The Contractor shall provide billing and invoicing services for CHG, effective October 1, 1999 in accordance with the "Withdrawal of TWRS (RPP) Transition Plan" the agreed upon FH/LMHC/RL Transfer Agreement, and the executed Memorandum of Agreement governing the provision of services between FH and CHG. Billing and invoicing instructions will be included in the Transfer Agreement.

G.4 DEFECTIVE OR IMPROPER INVOICES

Invoices not conforming to paragraph (a)(3) of contract clause FAR 52.222-25, Prompt Payment of Part II, Section 1, 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 to the Contracting Officers.

G.5 DOE PROPERTY ADMINISTRATION

The DOE Property Manager, identified for this contract is provided below. The contractor may use the Property Manager as a point-of-contact for guidance and assistance involving Property requirements. The Contracting Officer shall be contacted for any matter which involves a change in any of the expressed terms and conditions of the contract.

U S Department of Energy
Richland Operations Office
Organizational Property Management Officer
Office of Training Services and Asset Transition, MSIN A2-45
Post Office 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 to constitute 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. Changes in the CORs or CORs' authority will be transmitted via electronic mail. RL shall update, maintain and keep current the listing of CORs via electronic media and make available to the Contractor.

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 the terms and conditions of the contract.
- 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) What contract line items have been or may be affected by the alleged change;
 - (b) What 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) What adjustments are estimated to contract costs, delivery schedule, and other provisions affected by the alleged change;
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay, or disruption of performance. 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 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. A 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 - Alternate 1."

G.7 MODIFICATION AUTHORITY

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

- (e) Accept non-conforming work;
- (f) Waive any requirement of this contract; or
- (g) Modify any term or condition of this contract.

G.8 REPRESENTATIONS AND CERTIFICATIONS

The Representations and Certifications, for this contract as completed by the Contractor and, dated March 25, 1996, are hereby incorporated into this contract by reference, with the exception of Part IV -- Section K to Solicitation No. DE-RP06-95R1.13200, relating to Lockheed Martin Hanford Company (pp. K-1 through K-27) and dated March 25, 1996.

PART I - THE SCHEDULE

**SECTION H
 SPECIAL CONTRACT REQUIREMENTS
 FLUOR HANFORD, INC.**

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H.1 SEPARATE CORPORATE ENTITY

The work performed by the Contractor under this contract shall be conducted by a separate corporate entity from its parent company. The separate corporate entity must be set up solely to perform this contract and shall be totally responsible for all contract activities.

H.2 PROMISES AND COMMITMENTS

The promises and commitments identified below will expire on September 30, 2001. The Contractor will continue to support the local community in accordance with DEAR 970.5226-3 "Community Commitment" located in Section I of this contract.

Detailed below and incorporated into this contract modification is a list of negotiated promises made by the Contractor in its contract proposal, dated March 25, 1996, 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, in good faith, strive 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 DOE in any determination to exercise the Options provided for in Section B of this contract.

The Contractor agrees to the following:

- (1) 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 CEIG, to help create 3000 new jobs in the Tri-City area* by the end of FY 2001. The Contractor will assume 70% 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.

- (2) The Contractor shall outsource 50% of funds expended by 2001, and within five years, 60% of all outsourced dollars shall be directed to local, regional, and Native American businesses. The Contractor shall also establish a SB/SDB loan program. For purposes of this paragraph, outsourcing means contractual commitments to entities other than the Contractor.

- (3) The Contractor shall leverage local economic benefit from execution of this contract, and from the worldwide industrial and commercial interest of the Contractor.
- (4) 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.
- (5) The Contractor shall continue the DOE Mentor/Protege program at Hanford, based on the model developed at Fernald.
- (6) The Contractor shall set up a loan program with financing available to the local business community for capital expenditure or mobilization for new work at Hanford. Businesses that are not able to obtain traditional financing shall have access to capital through Prin Vest, using their Project Hanford subcontracts as collateral.
- (7) 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 the 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.
- (8) The Contractor's technology transfer activity will include 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 PHMC are evaluated for commercial potential and, where appropriate, offered for licensing.
- (9) The Contractor shall perform a Technology Audit and Resource Inventory to produce a database of transferable skills, tools, and capabilities. This continuing process shall promote awareness of Hanford 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.

- (10) The Contractor commits to invest up to 12 percent of the fees earned above \$7 million through performance, to benefit the community. This reinvestment shall be structured to leverage the skills, relationships, and purchasing power of the PHMC to the benefit of the Tri-Cities. The proposed step formula for contributions in any given year is:

- 6% of total fees earned between \$7 million and \$14 million
- 8% of total fee over \$7 million if fee is between \$14 million and \$28 million
- 12% of total fee earned over \$7 million if fee is over \$28 million.

- (11) 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 (e.g., foods, pulp and paper, infrastructure, manufacturing, information and communications, environmental, mining, power) to gain access to client and supplier bases.

The Contractor, working with TRIDEC, shall assign and supply experienced people from the Contractor's parent corporation commercial businesses to assist TRIDEC in attracting new businesses 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 under TRIDEC auspices.

- (12) The Contractor agrees to continue Columbia Basin Ventures, Inc. (CBV) which provides direct investment or third-party financing for business opportunities that offer high potential for regional growth.

The venture will maintain close working ties with the Project Hanford Office of Technology Management and Economic Transition, but shall provide a complementary resource to focus on non-Hanford business and technology. The Contractor shall establish a \$7.56M investment fund (this number represents the Contractor's share in the \$10M original investment fund) from their private

resources for use by CBV. Credit will be given against this fund for prior Contractor participation (without LMHC) in CBV through FY 1999.

CBV shall work through existing local agencies (e.g., TRIDEC, Tri-Cities ports and municipalities, and the Benton Franklin Regional Council), providing personnel from the Contractor's parent corporation commercial businesses to support their initiatives and enhance their effectiveness. Personnel expert in industrial recruitment shall be assigned to TRIDEC. CBV shall exert the corporate leverage developed by these companies. The Contractor shall put this buying power and supplier network to use in efforts to attract industry and broaden the market reach of Hanford spin-off companies. CBV shall provide and attract investment capital for local ventures and shall partner with local academic (WSU, CBC), research (PNNL), economic development organizations and industry organizations to help create jobs in the Tri-Cities area.

- (13) The Contractor shall partner with the northwestern division of the Associated Western Universities (AWU NW). The Contractor shall broaden the consortium's training activity associated with the University/DOE Laboratory Cooperative Science Education Program (Lab Coop) fellowships at Hanford. The Contractor shall develop an engineering Mentorship Program to bring science and engineering students into contact with the Contractor and Major Subcontractor managers at engineering and environmental remediation projects.

The Contractor shall work with Columbia Basin College (CBC) and Washington State University 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 Site wide Training Program.

- (14) The Contractor shall form a Community Involvement Team to be a primary vehicle for the PHMC civic and regional involvement. The team will be administered by a senior executive of the PHMC's Office of External Stakeholders, and will help mobilize and support personal commitments to community support activity.

PHMC 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 USE OF CORPORATE AFFILIATES

- A. The Contractor and the Contractor's subcontractors may obtain direct support from their affiliates to meet technical and staffing requirements consistent with Make-or-Buy evaluation. Prior to ordering any support from an affiliate, the Contractor shall document the basis for selecting the affiliate and how the evaluation process was consistent with the requirements of the Clauses entitled "Make-or-Buy Plan and/or Program/Subcontracts Consent and Contract Clause Flow Down Requirements." For purposes related to the Make-or-Buy decision, non-competitive awards to affiliates are considered a "make" and competitive awards to affiliates, a "buy." In addition, the Contractor or subcontractor will ensure that prior to award, each transaction with an affiliate will be evaluated for potential conflicts of interest and adjudicated in accordance with Clause, "Organizational Conflicts of Interest."
- B. Materials, supplies, equipment and services obtained from a Contractor or subcontractor affiliate on a non-competitive basis will be at cost without additional fee or profit, or cost of money. Fee or profit paid to an affiliate through a non competitive agreement will be deducted from the Contractor's negotiated fees earned for the Fiscal Year.
- C. For competitive procurements, Subcontracts with affiliates require advance approval in writing from the Contracting Officer. Such subcontracts must be:
- (1) Legally enforceable;
 - (2) Use the same terms and conditions that would apply to a third party supplier; and,
 - (3) Result in an agreement based on price competition as defined by FAR 15.403-1(c), and for cost-type awards be supported by a cost realism analysis.
- D. Contractor affiliates providing materials, supplies, equipment, and services shall perform such work in accordance with the applicable terms and conditions of this Contract.

H.4 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.5 RESPONSIBLE CORPORATE OFFICIAL

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor President and Chief Executive Officer who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: Tom Roell

Position: President

Company: Fluor Federal Services

H.6 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

H.7 GUARANTEE OF PERFORMANCE

The Contractor or the Contractor's parent organization(s) has (have) provided a Performance Guarantee Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor, including repayment of unearned provisional fee, will be satisfactorily fulfilled. The Performance Guarantee Agreement dated TBD is incorporated herein by reference and made part of this Contract.

H.8 ENVIRONMENTAL RESPONSIBILITY

A. 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

Decree [aka Tri-Party Agreement (TPA)], consent orders, consent decrees, and settlement agreements between DOE and Federal and State regulatory agencies.

B. Environmental Permits

This clause addresses the following permit scenarios:

- (1) Where the Contractor is the sole permittee; (2) where the Contractor and DOE are joint permittees; (3) where multiple Contractors are permittees.
- (2) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from Federal, State, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract. Under this permit scenario, that Contractor shall make no commitments or set precedents that are detrimental to DOE or other Contractors. Contractor shall coordinate its permitting activities with DOE, and with other Hanford Site Contractors which may be affected by the permit or precedent established therein, prior to taking the permit action.
- (3) Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE shall sign permits as owner or as owner/operator with Contractor as operator or co-operator, respectively. DOE will co-sign Hazardous Waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor must coordinate its actions with DOE. 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 Contractor implementation of any permit requirement. Notification need not be in writing.
- (4) 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.

C. Permit Applications

The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials necessary to be 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 which shall be performed by DOE in a prompt manner. Special circumstances may require permits to be submitted in a shorter time frame. 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 requests shall be submitted 30 days before such material would ordinarily be required to be provided to DOE. Any such schedule revision shall be effective only upon approval from the Contracting Officer.

D. 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.

E. Copies, Technical Information

The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE shall, upon request, make available to the Contractor access to copies of all 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 all 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 shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.

F. 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 to sign such certification statements submitted to Federal or state regulatory agencies under the applicable regulatory program.

G. 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. The Contractor shall have plenary authority to allocate any fines and penalties among its subcontractors based on criteria developed by Contractor and applied in Contractor's sole discretion. The Contractor shall indemnify and hold harmless DOE and its employees, officers, agents from any costs, claims (including third-party claims for damage to persons or property), demands, fines or penalties, including reasonable legal costs, resulting from any failure of the Contractor to comply with applicable permit or regulatory requirements, or resulting from any obligations DOE may incur as a result of

signing defective or non-conforming permit applications or submittals prepared by or under the direction of Contractor.

H. 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 G 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.

I. Termination, Expiration, Permit Transfer

In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer on an allowable cost basis 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 unless said claims result from Contractor's action or inaction that occurred prior to transfer.

J. Miscellaneous

The Contractor shall accept assignment or transfer of permits pertaining to matters under this Contract 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.

H.9 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 representative. 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 require subcontractors to comply with the requirements of this clause for applicable work scope.

H.10 EMERGENCY CLAUSE

- A. The RL Manager or designee shall have sole discretion to determine when an emergency situation exists at the Hanford Site, except for RPP facilities, affecting site personnel, the public health, safety, the environment, or security. The Manager, Office of River Protection (ORP), or designee has the discretion to determine whether an emergency situation exists under the Waste Treatment and Immobilization Plant contract and other ORP contract areas of work that might affect RL workers. In the event that either the RL or ORP Manager or designee determines such an emergency exists, the RL Manager or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The RL Manager 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.11 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 should 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 should coordinate with an appropriate Contractor official, who will direct as needed, broader shutdown actions or other actions, as required. Such mitigating actions should subsequently be coordinated with the RL Manager, the facility/site DOE management, the RL Contracting Officer and the facility/site Contractor management. The shutdown direction should be promptly confirmed in writing from the cognizant Contracting Officer.

This authority is in addition to the contract clause entitled "Stop-Work Order – Alternate I."

- 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 RL Manager. 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 RL Manager, or his delegated authority, in coordination with the Contracting Officer.
- D. The Contractor shall provide in its purchasing system, required under the contract clause entitled "Subcontracts (Cost Reimbursement and Letter Contracts)," for policies,

practices, and procedures for the 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.12 SHIPMENT NOTIFICATION

- A. The Contractor and /or Subcontractors shall notify Energy Northwest seven (7) days in advance (1) of any movement of "common" explosives over 1,800 pounds excluding small arms munitions or classified shipments within five (5) miles of Energy Northwest and/or, (2) of any railroad shipment from/to Hanford north of the rail spur to the Fast Flux Test Facility.
- B. For Radioactive Placard Shipments, the Contractor shall notify the State of Oregon Department of Energy, ATTN: Oregon/Hanford Transport Safety Analyst, for any shipment through Oregon.

H.13 OPTIONAL SERVICES

The Government may, at its option and during performance of this contract, unilaterally add any or all of the work scope identified in Section C.5 of this contract currently being performed by CHG or Bechtel Hanford Inc. (BHI). An equitable adjustment shall be negotiated for any work appropriately authorized and performed as a result of exercise of any portion of this option.

The addition of such added workscope, if any, shall be subject to the requirements of FAR 52.243.1, Changes - Fixed Price, or FAR 52.243.2, Changes - Cost Reimbursement, depending on contract type.

H.14 WITHDRAWAL OF WORK

- A. The Government may, at its option and during the performance of this contract unilaterally 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) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.

- C. 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 entitled "Termination (Cost-Reimbursement)."
- D. If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.15 USE OF DOE FACILITIES

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.16 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 therefore.

H.17 SUBCONTRACTS CONSENT AND CONTRACT CLAUSE FLOW DOWN REQUIREMENTS

- A. Prior to the placement of subcontracts and in accordance with the contract clause entitled "Subcontracts, the Contractor shall ensure the following:
 - (1) The subcontracts contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow down applicability of the clauses entitled "Utilization of Small Business Concerns" and "Small Business Subcontracting Plan" contained in PART II, Section I, of the contract;
 - (2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR Part 15) and subcontractor Representations and Certifications are completed

(see the document referenced in the contract clause entitled "Representations and Certifications"); and

- (3) Any required prior notice and description of the subcontract is given to the Contracting Officer, and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.
- B. The Contractor shall also obtain and furnish to the Contracting Officer either an Organizational Conflict of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR952.209-72, "Disclosure or representation," from all subcontractors to be used under this contract to perform the types of work identified in DEAR 909.507-1. No work shall be performed by the subcontractor until the Contracting Officer has cleared the subcontractor for OCI, if required.
- C. The Contractor shall ensure that all cost-reimbursable type subcontracts placed for a total amount which exceeds \$5 million shall have incentive provisions based on performance measurements, criteria, and success factors.
- D. In compliance with the Government's initiative of "Streamlining Procurement Through Electronic Commerce," and presenting a "singleface" to industry, the Contractor shall strive to implement, within available funding, an Electronic Commerce System that will generate a paperless, automated, integrated procurement/payment system. This system shall, to the maximum practicable extent, subject to DOE approval, allow for electronic request for quotations, quotations, purchase orders, electronic invoices, and remittance advices; full integration between the procurement, receiving, inventory control and accounting systems; and accounting system programs that compare invoices, receipts, and orders and automatically issue electronic funds transfer payments.

H.18 SUBCONTRACTOR ENVIRONMENT, SAFETY, QUALITY, AND HEALTH REQUIREMENTS

The U.S. Department of Energy (DOE) and the Contractor are committed to zero accidents on the PHMC work. To that end, unless expressly approved by the Contracting Officer, the Contractor is required to subcontract only with subcontractors that have an acceptable Environmental, Safety, Quality, and Health (ESQ&H) program. Elements of an acceptable ESQ&H Program should include the following:

- (a) An ESQ&H program that is compliant with applicable local, State, Federal and DOE regulatory requirements;
- (b) Employees are properly trained and equipped to perform their assigned work. The subcontractor has established an orientation program for new hires, which includes ESQ&H;
- (c) Policies and procedures are in place to eliminate accidents, injuries/illnesses, and damage to property and equipment;
- (d) ESQ&H records are adequately and properly maintained;
- (e) Accidents/incidents are investigated promptly and required reports are generated. If the investigation discovers inadequacies in either the work process or the policies and procedures, the appropriate processes are put in place to avert the accident/incident in the future and personnel are provided proper training;
- (f) Hazards are identified and appropriate measures are taken to ensure that personnel and equipment are adequately protected as a result of identified hazards;
- (g) Employees have the right to report unsafe conditions and to interrupt or stop work without fear of reprisal;
- (h) The frequency of ESQ&H meetings with employees to discuss the work to be performed and the hazards associated with the work is based on the scope of work and commensurate with the work hazards;
- (i) ESQ&H inspections/audits are conducted to evaluate effectiveness of the program;
- (j) The subcontractor has an average Experience Modification Rate (EMR), Occupational Safety and Health Administration (OSHA) Recordable, and Lost Workday case rate(s) of (1.0, 2.0, and 0.64), respectively, or less, for the previous three (3) years and shows an improving trend in safety performance. For construction subcontractors the values shall be less than 1.0, 2.0, and 3.0, or show an improving trend in safety performance that is deemed acceptable by the Contractor.
- (k) The subcontractor has an established written Hazard Communication Program and a system within the program to maintain Material Safety Data Sheets (MSDS);
- (l) The subcontractor has had no significant willful citations from OSHA or other regulatory organizations during the previous three (3) years; and

- (m) The subcontractor has received no fines for Nuclear Regulatory Commission non-compliances during the previous three (3) years.

The Contractor shall flow down all applicable ESQ&H program criteria to the lowest tier subcontractor performing construction, equipment fabrication or commissioning.

H.19 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, including lower-tier subcontracts. This clause is required as a flow-down clause in all subcontracts.

H.20 INFORMATION

A. Management of Information Resources

The Contractor shall design and implement Information Resources Management (IRM) capabilities for the Hanford Site in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.

B. Release of Information

- (1) Working with the RI, Office of Intergovernmental, Public & Institutional Affairs (IPI) and the Records Manager when appropriate, the Contractor shall be responsible for developing, planning, and coordinating proactive approaches to timely dissemination of information regarding DOE unclassified activities onsite and offsite.
- (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.

C. 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, 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 the contract clauses entitled "Security" and "Classification/Declassification."

D. 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 which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (3) Information which 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 which 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, such an agreement shall also be signed by Contractor personnel.

- E. 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.21 PRIVACY ACT SYSTEMS OF RECORDS

- A. The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the contract clause entitled "Privacy Act."

<u>System No.</u>	<u>Title</u>
DOE-5	Personnel Records of Former Contractor Employees
DOE-11	Emergency Locator Records
DOE-13	Payroll & Locator Records
DOE-14	Report of Compensation
DOE-15	Payroll & Pay-Related Data for Employees of Terminated Contractors
DOE-23	Richland Property System
DOE-28	General Training Records
DOE-31	Firearms Qualifications Requirements
DOE-32	Gov't Motor Vehicle Operator Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-40	Contractor Employees Insurance Claims
DOE-43	Personnel Security File
DOE-47	Security Investigations
DOE-51	Employee and Visitor Access Control Records
DOE-53	Access Authorization for ADP Equipment
DOE-58	General Correspondence Files

- B. The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as necessary to keep it current. A formal modification to the contract is not required to incorporate these revisions; but, the revisions become effective upon mutual agreement of the parties. The mutually agreed upon revisions shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause entitled "Privacy Act." The revisions will be formally incorporated per the next annual contract update modification, unless added sooner by the Contracting Officer.

H.22 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 Department of Energy Acquisition Regulations (DEAR), and other items as 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 contributions 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 FH 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.
 - (a) 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 incurred costs as promptly as practical after receipt of the Contractor's proposal.

- (b) 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. Accompanying the annual final indirect incurred cost submission the Contractor shall provide a certification

subject to the penalty provisions for unallowable costs as stated in the contract clause, "S2.242-3. 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:

- (1) 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;
- (2) A closing financial statement;
- (3) The accounting for Government-owned property required by the clause entitled "Property;" and
- (4) 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 the contract clause entitled "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.23 ASSIGNMENT OF DOE PRIME CONTRACTS

During the period of performance of this contract it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign (and Contractor agrees to accept) existing or future DOE prime contracts supporting site work to this contract. 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.24 GOVERNMENT-OWNED PROPERTY

During the contract period of performance, the Contractor will continue to be accountable for all existing and acquired Government-owned property as identified and recordable in the Richland Property System and all special nuclear material as identified in the Nuclear Material Management and Safeguards System. In addition, the Contractor will be responsible for updating these systems to reflect changes in property or special nuclear materials inventory.

H.25 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. 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 entitled "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.26 RETRAINING FOR DISPLACED EMPLOYEES

- A Salaried and hourly employees whose jobs are likely to be eliminated due to changes in the Contractor's scope of work, budgetary reductions, or efficiencies in performing the mission who are covered by the terms of section 3161 may be offered opportunities for retraining. Retraining programs will be designed to provide occupational skills which are in demand by the Contractor or by other employers locally, regionally, or nationally, as appropriate. Tuition payments for courses to qualify displaced employees for outside

employment may be approved by the Contractor. Retraining for outside employment may be conducted during working hours under programs approved by DOE.

- B. When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department pursuant to section 3161, the Contractor shall comply with the DOE approved plan. This plan may prescribe funding amounts for retraining eligible workers for new Contractor jobs in environmental cleanup, and may prescribe funding amounts and procedures for providing displaced workers with tuition reimbursement for training or education that will assist the transition to new careers.

H.27 TRANSFER-RELOCATION ALLOWANCE

- A. An allowance for transfers and relocations accomplished pursuant to section 3161 may be reimbursed with an outbound and an inbound allowance not to exceed the employee's receipted expenses up to 4-1/3 weeks salary, except that a flat amount not to exceed one thousand dollars (\$1,000.00) may be allowed in lieu of receipted expenses.
- B. When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department pursuant to section 3161, the Contractor shall comply with the plan. This plan may prescribe funding amounts for relocating an eligible employee to another company at another DOE site when the employee does not qualify for relocation assistance under the hiring Contractor's policies.

II.28 LABOR RELATIONS

- A. The Contractor will respect the rights of employees (1) to organize, form, join, or assist labor organizations, bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining, or (2) to refrain from such activities.
- B. To the extent required by law, the Contractor shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining obligations.
- C. The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding, any labor relations developments at the prime or subcontract level that involve or appear likely to involve:
 - (1) Possible strike situations affecting the facility;
 - (2) Referral to the Energy Labor-Management Relations Panel;

- (3) The National Labor Relations Board at any level;
 - (4) Recourse to procedures under the Labor-Management Act of 1947, as amended, or any other Federal or state labor law; or
 - (5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.
- D. Cost of wages and fringe benefits, to employees represented by collective bargaining units, not in excess of those provided in the collective bargaining agreements shall be allowable. The costs associated with grievance processing and settlements, arbitration, and arbitration awards shall be allowable in accordance with the provisions of the contract clause entitled "Insurance - Litigation and Claims." All other costs and expenses incurred pursuant to the provision of the collective bargaining agreements and revisions thereto are allowable costs hereunder.

H.29 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 its subcontracts.

H.30 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.31 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, and as modified throughout performance of the contract.)

- B. This clause applies to employees performing work under RL 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 RL 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:
1. Article VII Employment, Section 2 only
 2. Article XII Non-Signatory Contractor Requirements
 3. Article XIII Hours of Work, Shifts, and Overtime
 4. Article XIV Holidays
 5. Article XV Wage Scales and Fringe Benefits, Sections 1 & 2 only
 6. Article XVII Payment of Wages-Checking In & Out, Section 3 only
 7. Article XX General Working Conditions
 8. 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 Site Stabilization Agreement, including its Appendix A, is modified by the involved parties.
- 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," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," and "Contract Termination--Debarment."
- 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.
- K. 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.32 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 as described in the Management and Integration Plan 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), activity data sheet numbers (ADS), 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 will assume existing responsibilities for accounting control of special nuclear materials. The Contractor will continue to operate the classified Departmental Inventory Management System (DIMS), which reports the financial aspects of special nuclear material inventory changes and status.
- D. 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).
- E. The financial management systems of Major Subcontractors shall have the same level of detail required of the Contractor and be consistent with the requirements of this clause.

H.33 PERFORMANCE OBJECTIVES, MEASURES, EXPECTATIONS, 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 contract period. 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 which may be negotiated prior to placement in the contract. The final determination of incentives and related fee distribution will be made solely by DOE, after discussion with the Contractor, 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 RL Manager. However, the final decision shall be at the unilateral discretion of the RL Manager. 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, the Contractor and DOE shall execute Performance Incentives and incorporate them into Section J, Appendix D, for each incentive. The Performance Incentives set forth the agreed upon criteria/specification for acceptable performance of such objectives, measures, and expectations. The criteria/specifications set forth in the Performance Incentives should be mutually agreed to by both DOE and the Contractor. In the event the parties cannot mutually agree, the final decision shall be made at the unilateral discretion of the RL Manager.

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 RL Manager. The RL Manager will make a determination and provide a copy of that determination to the Contractor. The determination will be at the unilateral discretion of the RL Manager.

This Contract contains Performance Based Incentives (PBI) that provide the opportunity for the Contractor to earn fee. A change of conditions, circumstances, funding, or assumptions which impact Contractor's ability to meet a PBI shall constitute a change under Clause 1.74 and will be processed to subsections (b) through (e) thereof in a timely manner, when such changes are beyond the Contractor's reasonable control. For the

purpose of changes hereunder the reference to "fixed-fee" in Clause I.74 shall be considered to be a reference to PBI/fee.

D. Positive and Negative Incentives

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, as described within the Performance Based Incentive. If the negative level of performance is not surpassed, no fee will be paid for these objectives, measures and/or expectations and further 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 (FY). Furthermore, for each FY the aggregate of all negative deductions actually invoked shall not exceed 20% of the total available fee in a given year for all Performance Incentives. Nothing within this clause is intended to limit the Government's rights pursuant to the Conditional Payment of Fee Clause.

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 PI, 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 appropriate performance period the government shall evaluate the Contractor's overall performance to determine the 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 RL Manager, (2) invoking Clause B.7, "Option Exercise, Reduction of Term", (3) in the DOE decision whether to terminate the contract for default, and (4) whether to invoke the Conditional Payment of Fee Clause. The final determination on the acceptability of the work performed by the

Contractor under this provision and incentive fee determination shall be made solely at the unilateral discretion of the RL Manager.

H. Superstretch Incentives

Performance incentives addressing superstretch goals should be developed prior to the beginning of the fiscal year, but may be developed and implemented during the term of the contract. The Contractor shall coordinate with the RL Manager or designee to identify superstretch goals. 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 the clause entitled "Estimated Cost and Fee." The accelerated workscope must be identified and authorized by a Baseline Change Request (BCR) approved by the RL Manager. The BCR shall document the scope, cost, and funding source necessary to incorporate the accelerated workscope into the baseline. The superstretch costs will be identified in the BCR and will include fee at the rate of up to 20% of the revised BCWS of the accelerated workscope. A copy of the performance incentive shall be attached to the BCR.

The BCR will be processed through the FH and RL Integrated Change Control Boards. 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.

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.

The use of superstretch incentives is at the sole discretion of the RL Manager.

I. Multi-Year Incentives

A multi-year performance based incentive is any PBI in which the requirements are established in one fiscal year but the final completion date extends into a future fiscal year.

H.34 SEGREGATION OF COSTS

- A. Whenever the contract contains both fixed-price and cost-type efforts, the Contractor shall maintain separate accounts for each unique contract type by Contract Line Item Number (CLIN), by task order, or other suitable accounting procedure of all incurred segregable costs of work allocable to the work effort directly related to each arrangement

- B. Whenever the contract contains a provision for an incentive for a portion of the work effort, the Contractor shall maintain separate accounts, by CLIN, work authorization, task order, or other suitable accounting procedure of all incurred segregable costs of work related to the incentive.
- C. The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses "Ownership of Records" and "Accounts, Records and Inspection, but, in no case, for a period of less than 3 years following the Government's determination of the applicable incentive fee.

H.35 PROVISIONAL PAYMENT OF FEE FOR COMPREHENSIVE AND ANNUAL PBI'S

- A. Provisional payments of fee may be paid before the final determination of fee. 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 performance fee pool.
- B. 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 performance fee pool in each of the first two calendar months of each Fiscal Year and 5% in each calendar month thereafter.
- C. The final fee determination will be made at the unilateral discretion of the Contracting Officer or RL Manager, as appropriate, in accordance with the fee clauses of this contract. In the event overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the contract clause entitled "Interest."
- D. Fee associated with multi-year incentives is not subject to this clause.

H.36 SHARING EARNED FEES WITH EMPLOYEES

The Contractor as set forth herein will continue a merit based employee fee sharing program to motivate and recognize employees and improve performance. The fee sharing process will be described in a site wide procedure. For each year in which the Contractor earns fee in excess of 60% of the fee available for annual performance based incentives, the comprehensive incentive, and progress payments based on completion dates in the multiyear incentives, the Contractor will set aside 5% of its total earned fee for each fiscal year to be provided to its employees as stipulated in the site wide procedure.

H.37 PROVISIONAL AND PROGRESS PAYMENTS OF MULTI-YEAR INCENTIVES

- A. Individual multi-year PBI's shall establish whether payments within the PBI are to be provisional, progress, or a combination thereof.

(1) Provisional Payments

A provisional payment is a conditional payment of fee for partial completion of a multi-year performance based incentive (PBI). Provisional payments may be based upon earned value, completion of milestones, a combination of both, or any other methodology set forth in the individual multi-year PBIs. Provisional payments are conditioned upon the successful completion of a subsequent event as defined in the individual multi-year PBIs. That event may include successful completion of a progress payment event, successful completion of the entire multi-year PBI, or any other event described in the individual multi-year PBIs. Upon successful completion of the subsequent event, the provisional payment of fee will become a final payment of fee.

If the Contractor fails to successfully complete the subsequent event upon which the provisional payment of fee is conditioned, the contractor shall refund to the government the provisional payments it has received that are associated with the missed performance based event. The Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the contract clause entitled "Interest."

(2) Progress Incentives

Payments for achieving progress incentives will be final payments of fee based upon partial completion of a multi-year PBI. Progress incentive payments may be based upon earned value, completion of milestones, a combination of both, or any other methodology set forth in the individual multi-year PBIs. Progress incentives will generally be based upon defined events within the individual multi-year PBIs which, in the Contracting Officer's discretion, have greater intrinsic value to the government than provisional goals.

- B. Upon successful completion of a provisional or progress incentive payment event, the contractor shall request and receive Contracting Officer approval prior to drawing down fee from the letter of credit. The Contractor's request for payment shall occur no more frequently than once per month.
- C. For multi-year PBIs, "completion" of a provisional payment event, a progress payment event, or the final multi-year PBI shall be consistent with Clause H.33.E.

H.38 MULTI-YEAR FEE POOL.

- A. It is the intent of the parties that the entire fee pool will be allocated and made available during the contract term by assigning fee to the comprehensive, annual, or multi-year PBIs. However, an "unallocated" pool of fee will be maintained which has not been assigned to the comprehensive, annual, or multi-year PBIs. The Contracting Officer shall use its best efforts to allocate the unallocated fee to meaningful work efforts during the term of the contract. The allocation is at the unilateral discretion of the Contracting Officer. Fee from the comprehensive, annual, and multi-year PBIs, which is unearned for failure to meet PBI requirements, is forfeited and shall not be returned to the unallocated fee pool.
- B. The total estimated fee pool may be adjusted in accordance with Clause B.4, Estimated Cost and Fee.

H.39 CONTRACTOR CONTROLLED INSURANCE PROGRAM

The Contractor shall procure, at no cost to the DOE, a Contractor Controlled Insurance program (CCIP), as set forth in the Contractor's proposal dated March 25, 1996 to the extent available on a commercially reasonable basis.

The Contractor support the DOE's efforts to improve their insurance program by the collection of insurance claim statistics and information. They will assist the DOE by complying with the insurance reporting requirements as defined by DOE Order 350.1 Change 1.

(No changes to the unredacted text)

This clause does not apply to liabilities covered by the Nuclear Hazards Indemnity Agreement.

H.40 INDIRECT COST ALLOCATIONS

For the base contract and any extensions thereof, allocations of home office and corporate office general and administrative (G&A) expenses are allowable only to the extent provided for under this Clause. In recognition of the nature of work performed under this Contract, the Contractor may propose a special allocation of residual home office expenses in accordance with FAR 99.403-40(c)(3). Such proposal will be processed in accordance with Cost Accounting Standards requirements and DOE policy. Formal approval of a special allocation of home office residual expenses by the Contracting Officer would, accordingly, make such allocable costs allowable under this Contract up to a maximum annual amount of \$1,500,000.

In the absence of an approved special allocation, as discussed above, limits are hereby placed on the Government liability under this Contract for the Contractor's corporate and home office

allocation. The amount of \$500,000 per year represents the annual ceiling amount that may be reimbursed under this Contract. The Contractor may bill provisionally by prorating the appropriate ceiling amount on an annualized basis.

H.41 AUTHORIZATION AGREEMENTS

In accordance with the Integrated Environment, Safety and Health Management System Description, Authorization Agreements (AAs) will be developed, mutually agreed to and executed between FH and DOE-RL. The purpose of an AA is to serve as a mechanism whereby the U.S. Department of Energy, Richland Operations Office (RL) and Fluor Hanford, Inc., (FH) jointly clarify and agree to terms and the key conditions for conducting work safely and efficiently in a facility. The AAs will be developed and maintained for all facilities as deemed necessary by DOE RL. The AAs will not alter any terms and conditions of the Project Hanford Management Contract (PHMC) and do not impose on FH any liabilities, fines, or penalties not already imposed under the terms and conditions of the PHMC and current statutes, rules, regulations and ordinances.

H.42 SPENT NUCLEAR FUELS CONTINGENT FEE

A. Start of Fuel Removal

FH agrees that its retention of any fee paid in excess of \$1 million for fiscal year (FY) 1999 Spent Nuclear Fuel Performance Agreements and any fee paid in excess of \$1 million for FY 2000 Spent Nuclear Fuels Performance Agreements will be contingent upon the successful start of fuel removal from the K Basins by December 7, 2000. In addition, if fuel removal is not successfully started by December 7, 2000, then any fee allocated, in FY 2001, for the start of fuel removal cannot be earned.

As set forth in the Tri-Party Agreement (TPA) Milestone P-34-16 (as of December 2, 1998) and for purposes of this clause, the start of spent nuclear fuel removal is defined as "The Cold Vacuum Drying (CVD) Facility and Canister Storage Building (CSB) shall be ready to receive spent nuclear fuel. The spent nuclear fuel transport system shall be operable. The K West Basin spent nuclear fuel retrieval system shall begin retrieving, cleaning, and packaging spent nuclear fuel, and the First Multi-Canister Over Pack of spent nuclear fuel will be loaded and transported to the Cold Vacuum Drying Facility for processing."

If FH fails to achieve a successful start of fuel removal from the K Basins by December 7, 2000, and therefore FH fails the condition subsequent to retain the contingent portion of fee paid on Spent Nuclear Fuels Performance Agreements in FY 1999 and FY 2000, then the contingent fee paid will be offset against any FH fee earned in FY 2001 in accordance with the Schedule below. Furthermore, notwithstanding any other provision in this

Contract, including but not limited to, "Performance, Objectives, Measures, Expectations and Fee Distribution," if FH's total earned fee in FY 2001 is insufficient to offset all of the Spent Nuclear Fuel contingent fee paid in FY 1999 and FY 2000, FH shall reimburse any remaining amount to RL.

OFFSET SCHEDULE

Date start of fuel removal is achieved	Offset
On or Before December 7, 2000	None
After December 7, 2000 and On or Before February 7, 2001	33% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements
After February 7, 2001	100% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements

B. Changes, and Termination

(1) Identification of Budget and/or Schedule Impacts

FH shall treat any DOE direction or action that causes an increase or decrease to the Spent Nuclear Fuel Project budget and/or schedule in accordance with the clause entitled, "Changes—Cost Reimbursement."

(2) Termination

In the event FH is terminated for default, any fee that is contingent at that time shall be forfeited

H.43 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor or Awardee 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 regulations.

H.44 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 regulations.

H.45 TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)

A. For contractor travel expenses incurred on or after October 1, 1999, a ceiling limitation of \$1,620,000 shall apply to all reimbursements made for contractor travel expenses, funded by DOE under the FY 2000 Energy & Water Development Appropriations Act, under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer. Travel costs generally include lodging, meals, incidental expenses, airfare, rental cars and other miscellaneous expenses. Costs associated with certain types of travel are excluded from the ceiling limitation under this clause. Examples of excluded travel types are listed below:

1. Travel performed under work for others agreements if funded by other than Energy & Water appropriations;
2. Travel of subcontractors (but major PHMC subcontractors are included);
3. Travel of non-DOE users to participate in experiments at DOE user facilities;
4. Travel costs fund by other appropriations;
5. Travel costs of travel management centers;
6. Relocation costs;
7. Costs of workshops/seminars (other than travel costs), such as, rental of meeting rooms, public address equipment, speakers' fees; and
8. Registration costs of training classes.

B. Notwithstanding any other provisions of the contract, the contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 1999 and before October 1, 2000 which exceed the rate and amounts that apply to federal employees under subchapter 1 of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter 1 of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after April 15, 2000 and before October 1, 2000. Costs, which exceed these rates

and amount, will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.

- C. Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
- (i) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (ii) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (iii) Standardized Regulations (SR) for travel allowances in foreign areas.
- D. Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.

Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are allowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.46 OCCUPATIONAL HEALTH RECORDS AND RADIATION EXPOSURE RECORDS

The Contract Clause entitled "Access to and Ownership of Records" is implemented as follows with respect to occupational health records and radiation exposure records:

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 DOE. All radiation exposure records generated during the performance of Hanford-related activities will be maintained by the Pacific Northwest National Laboratory (PNNL) and are the property of DOE.

H.47 WORKERS' COMPENSATION

The contract clause entitled "Insurance--Litigation and Claims" is implemented as follows with respect to Worker's Compensation:

Pursuant to State of Washington Revised Code (RCW) Title 51, Section 51.04.130 Industrial Insurance Coverage for Hanford Worker – Special Agreements, the Department of Energy (DOE), Richland Operations Office (RL) is a group self-insurer for purposes of workers' compensation coverage. The coverage afforded by the workers' compensation statutes shall, for performance of work under this contract at the Hanford Site, be subject to the following:

- A. The Contractor shall be relieved of all obligation to pay premiums for such coverage, DOE having agreed, under the terms of a contract with the Department of Labor and Industries of the State of Washington (L & I) to bear the actual cost of such coverage.
- B. The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the L & I, such payroll records as are required by the said statutes.
- C. The Contractor shall submit to DOE (or other party as designated by DOE), for transmittal to the Department, the accident reports provided for by RCW Title 51, Section 51.28.010.
- D. The Contractor shall take such action, and only such action, as DOE requests in connection with any accident reports, including assistance in the investigation and disposition of any claim thereunder and, subject to the direction and control of DOE, the conduct of litigation in the Contractor's own name in connection therewith.
- E. The Contractor shall be responsible for making all payments and submitting all reports required by RCW Title 51, Section 51.32.073.

H.48 AGREEMENT REGARDING PROPOSED CLAUSES

This contract modification includes clauses which have not been finalized through the formal rule making process. The Department of Energy anticipates promulgation of formal clauses, or revisions to the clauses, contained in this contract modification prior to, or shortly after, the effective date of this modification. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses. Absent material changes to the above clauses in the Final Rule(s) promulgating the clauses which would substantially increase the contractor's financial or corporate risk, the Contractor agrees to accept the final Departmental versions of these clauses.

- A. Section I clauses identified with a publication date of "(Month and Year TBE)" are clauses contained in the March 13, 2000 Federal Register Proposed Rule.
- B. Section I clauses identified with a publication date of "(XXX 2000)" are intellectual property clauses which are being prepared by the Department for release to the public as either a Proposed Rule or an Interim Final Rule.
- C. Section I. Conditional Payment of Fee Clause

H.49 ALTERNATIVE DISPUTE RESOLUTION

- A. The U.S. Department of Energy (DOE) and the Contractor both recognize that methods for fair and efficient resolution of significant disputes are essential to the successful and timely achievement of critical milestones and completion of all Contract requirements. Accordingly, the parties agree to:
 - (1) Participate in a partnering workshop to be conducted by an experienced professional jointly agreed upon by the parties, and,
 - (2) Jointly select a "standing neutral" within 30 days of completion of the partnering workshop. The "standing neutral" will be available to help resolve disputes as they arise. Such "standing neutral" can be an individual, a board comprised of three independent experts, or a company with specific expertise in the Contract area. If a "standing neutral" cannot be agreed upon, the DOE Office of Dispute Resolution will make a selection. The specific ADR processes and procedures, as well as the processes for selecting the "standing neutral" will be determined at the partnering workshop.
- B. The parties agree the following provision may be invoked for significant disputes upon mutual agreement of the RL Manager, and the President of FHI:
 - (1) DOE and the Contractor shall use their best efforts to informally resolve any dispute, claim, question, or disagreement by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If an agreement cannot be reached through informal negotiations after 30 days, then such disagreement shall be referred to the "standing neutral," pursuant to the procedures jointly developed in the partnering workshop.
 - (2) The "standing neutral" will not render a decision, but will assist the parties in reaching a mutually satisfactory agreement. In the event the parties are unable after 30 days to reach such an agreement either party may request, and the neutral

will render a non-binding advisory opinion. Such opinion shall not be admissible in evidence in any subsequent proceedings.

C. Formal Complaint

If the disputed issue is eligible to be brought pursuant to the Disputes Clause and is not resolved through the "Standing neutral" process, no later than 30 days after the completion of said process or a determination that said process will not be invoked, either party may proceed under the Section I Clause, *Disputes*.

PART II – CONTRACT CLAUSES

**SECTION I
 CONTRACT CLAUSES**

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I.1 FAR 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) above, 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.

I.2 FAR 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.

1.3 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) ALT. I (OCT 1995)

- (a) Except as provided in (b) below, 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 paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).
- (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.

1.4 FAR 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 the 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 this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I.5 DEAR 970.5231 PRE EXISTING CONDITIONS (MONTH AND DATE TBE) ALTERNATE I (MONTH AND DATE TBE)

- (a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before October 1, 1996, in conjunction with the management and operation of the Hanford Site shall be deemed incurred under Contract No. DE-AC06-87RL10930
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

I.6 FAR 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(c)(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.

1.7 FAR 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:

- (j) 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 any 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.

- (F) 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 received 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.
- (c) **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.

1.8 FAR 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 FAR 19.102.
 - (5) The facility is not located within an 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 one 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.

1.9 FAR 52.204-4 PRINTED OR COPIED ON RECYCLED PAPER (AUG) 2000

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

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

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper. "Recovered material", for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as--
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel

into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

- (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

I.10 FAR 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.

I.11 FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY (MAR 1996)

- (a) Certain supplies to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Javits-Wagner-O' Day Act (JWOD) (41 U.S.C. 48)).

Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

- (b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies by the time required, or if the quality of supplies provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies from other sources until the Contracting Officer has notified the Contractor that the mandatory source has authorized purchase from other sources.
- (c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:
- (1) National Industries for the Blind (NIB) 1901 North Beauregard Street, Suite 200 Alexandria, VA 22311-1705 (703) 998-0770
 - (2) NISH, 2235 Cedar Lane, Vienna, VA 22182-5200 (703) 560-6800

1.12 FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)

(a) *Definitions.*

As used in this clause--

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means--

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
 - (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

1.13 FAR 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.

1.14 DEAR 970.5204-92 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (MAY 2000)

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the Contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

1.15 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (MONTH AND YEAR TBE)

- (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.16 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES
(MONTH AND YEAR TBE)**

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored

(ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

- (d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

1.17 DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (MAY 2000)

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of the Clause in Section I entitled, DEAR 970.5204-3 "Access To And Ownership Of Records," at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in

determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of the clause in Section I entitled, "DEAR 970.5204-3 Access To And Ownership Of Records," all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time 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 (1) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) 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.

(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.18 FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--
- (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
- (1) The actual subcontract; or

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

- (ii) An offset shall not be allowed if--
 - (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**1.19 FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA
(OCT 1997)**

- (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current

as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

- (c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either--
- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
 - (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data--Modifications.

I.20 DEAR 970.5204-86 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Month and Year TBD)

- (a) *General.*
- (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon the contractor's development of, and performance under, an approved Integrated Safety Management System (ISMS) and an approved Safeguards and Security Plan (SSP).
 - (2) The minimum performance requirements of this contract relating to environment, safety, and health (ES&H) and to safeguards and security, will be set forth in an approved ISMS and SSP, or similar document, as required by the terms and conditions of this contract. These minimum requirements are: (i) implementation of the DOE-approved ISMS and SSP; (ii) compliance with applicable laws, regulations, and DOE directives; (iii) accomplishment of annual performance commitments relating to ES&H and safeguards and security; and (iv) prevention of catastrophic events or breaches of security (e.g., fatality; serious workplace-related injury or illness to one or more federal, contractor, or subcontractor employees or the general public; loss, theft, or unauthorized disclosure of classified information or special nuclear material; significant or grave damage to the environment or to the national security).
 - (3) If the contractor fails to obtain approval of the ISMS or SSP, or otherwise fails to achieve the minimum performance requirements of this contract relating to ES&H and safeguards and security during the performance evaluation period, otherwise earned fee, fixed fee, profit or share of cost

savings may be unilaterally reduced by the DOE Operations Office/Field Manager, or designee.

(b) *Fee Reduction.*

- (1) The amount of earned fee, fixed fee, profit, or share of cost savings that is subject to reduction will be determined by the severity of the performance failure relating to ES&H and safeguards and security pursuant to the degrees specified in paragraphs (c) and (d) of this clause.
- (2) If it is found that the facts and circumstances warrant a reduction of fee, profit, or share of cost savings, such reduction shall not be less than 51% nor greater than 100% of the amount of fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 26% to 50% for a second degree performance failure, and up to 25% for a third degree performance failure. The DOE Operations Office/Field Manager, or designee, may consider mitigating factors that may warrant a reduction below the applicable range, including a determination that no reduction should be made (see 48 CFR 970.15404-4-1(h)).
- (3) The amount of earned fee, fixed fee, profit, or share of cost savings that is subject to reduction under this clause, in combination with any reduction made under any other clause in the contract that provides for a reduction to the earned fee, fixed fee, profit, or share of cost savings amount shall not exceed the earned fee, fixed fee, profit, or the contractor's share of cost savings allocable to any one of the 6 month periods running sequentially from the date of the start of the evaluation period to the end of such period within which the event resulting in the reduction occurs. The amount of the earned or fixed fee, profit, or share of cost savings allocable to such sequential period shall be equal to the average monthly earned fee, fixed fee, profit, or share of cost savings for the length of the evaluation period, multiplied by the number of months established above for such period. Earned or fixed fee, profit, or share of cost savings, which is allocated to each sequential period, may be reduced if it is determined that an event warranting a reduction occurs within the designated period.

- (c) *Environment, Safety and Health (ES&H).* The degrees of ES&H performance failures under which reductions of fee, profit, or share of cost savings will be determined are as follows:

- (1) First Degree: Events that are considered catastrophic or could threaten the successful completion of a program or project. The following events or events of similar import will be considered first degree:
- (i) Failure to develop and obtain required DOE approval of a Safety Management System.
 - (ii) Failure to comply with an approved Safety Management System which results in any of the following events:
 - (A) Fatality.
 - (B) Serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor workers or member(s) of the public.
 - (C) Significant damage to the environment.
 - (D) Contractor actions leading to a Type A accident investigation (reference DOE O 225.1A, "Accident Investigations.").
 - (E) Breakdown of the safety management system creating risk of a Type A event.
 - (F) Non-compliance with applicable environmental, safety, and health laws, regulations, and DOE directives posing a Type A risk.
 - (G) Failure to notify DOE of an imminent danger situation after discovery.
 - (H) Failure to report events that could warrant consideration of a Type A or Type B investigation.
 - (iii) Failure to implement corrective action(s) in response to the occurrence of any first degree performance failure.
- (2) Second Degree: Events that are significantly adverse to safety or could result in significant additional cost to the Federal Government. The

following events or events of similar import will be considered second degree:

- (i) Contractor actions leading to a Type B accident investigation (reference DOE O 225.1A, "Accident Investigations").
 - (ii) Breakdown of the safety management system creating the risk of a Type B event.
 - (iii) Non-compliance with applicable environmental, safety, and health law, regulation, or DOE directive creating risk of a Type B event.
 - (iv) Failure to execute DOE approved implementation plans in response to Defense Nuclear Facilities Safety Board recommendations.
 - (v) Failure to meet key program milestones designed to substantially reduce risk to workers, the public, and the environment.
 - (vi) Failure to implement corrective action(s) in response to the occurrence of any second-degree performance failure.
- (3) Third Degree: Events that result from lack of management and/or worker attention to safety. These events may be indicators of future, more severe events and/or conditions, and if identified and corrected early can prevent serious accidents. The following events or events of similar import will be considered third degree:
- (i) Failure to implement corrective actions resulting from oversight evaluations, assessments, and inspections.
 - (ii) Failure to implement actions designed to integrate lessons-learned into work planning and execution.
 - (iii) Failure to implement corrective actions resulting from self-assessments.
 - (iv) Contractor actions that result in a lapse in Safety Management System implementation posing less than a Type B risk.

- (v) **Non-compliance with applicable environmental, safety, and health laws, regulations, and DOE directives posing less than a Type B risk.**
 - (vi) **Contractor actions that result in events which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the safety management system.**
 - (vii) **Failure to implement corrective action(s) in response to the occurrence of any third degree performance failure.**
- (d) ***Safeguards and Security.*** The degrees of safeguards and security performance failures under which reductions of fee, profit, or share of cost savings will be determined are as follows:
- (1) **First Degree:** Events that have been determined, in accordance with applicable DOE regulation or directive, to have resulted in, or that can reasonably be expected to result in exceptionally grave damage to the national security. The following events or events of similar import will be considered first degree:
 - (i) **Failure to develop and obtain required DOE approval of a Safeguards and Security Plan.**
 - (ii) **Failure to comply with an approved Safeguards and Security Plan which results in any of the following events:**
 - (A) **Loss, theft, or diversion of a nuclear device or components.**
 - (B) **Loss, theft, diversion, or unauthorized release of nuclear weapon design information.**
 - (C) **Loss, theft, or diversion of Category I/II/III quantities of Special Nuclear Materials (SNM).**
 - (D) **Loss, theft, diversion, or unauthorized release of information classified as Top Secret, Special Access Program (SAP) information, or Sensitive Compartmentalized Information (SCI).**

- (E) Intrusions into DOE computer systems containing Top Secret, SAP, or SCI information.
 - (F) Intrusions into DOE facilities containing critical nuclear devices, materials, information, or assets.
 - (G) Attacks against DOE federal and contractor employees that adversely impact a facility's or site's security posture.
 - (H) Acts of sabotage that place the safety or security of personnel, facilities, or the public at risk.
- (iii) Failure to implement corrective action(s) in response to the occurrence of any first degree performance failure.
- (2) Second Degree: Events that have been determined, in accordance with applicable DOE regulation or directive, to have actually resulted in, or that can reasonably be expected to result in serious damage to the national security. The following events or events of similar import will be considered second degree:
- (i) Loss, theft, or diversion of any non-SNM radioactive, sensitive, or dangerous materials that could pose a health threat or endanger security.
 - (ii) Intrusions into DOE computer systems containing Secret or sensitive unclassified information.
 - (iii) Inventory differences of Category I/II/III SNM, or greater than 50g of Tritium, beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.
 - (iv) A shipper-receiver difference involving a gain in the number of items for which the items total to a Category I or II quantity of SNM.
 - (v) Any amount of SNM found in an exceptionally dangerous/unaccounted storage environment or unapproved mode of transportation/transfer.

- (vi) Loss, theft, diversion, or unauthorized release of information classified as Secret.
 - (vii) Unsecured classified repositories of any type including safes, doors, or other protective encasements, that contain Top Secret, SAP, or SCI information.
 - (viii) Failure to implement corrective action(s) in response to the occurrence of any second degree performance failure.
- (3) Third Degree: Events that have been determined, in accordance with applicable DOE regulation or directive, to have actually resulted in, or that can reasonably be expected to result in undue risk to the common defense and security. In addition, this category includes events that result from a lack of contractor management and/or employee attention to safeguards and security requirements. These events may be indicators of future, more severe events and/or conditions, and if identified and corrected early would prevent serious incidents. The following events or events of similar import will be considered third degree:
- (i) Loss, theft, diversion, or unauthorized disclosure of information classified as Confidential.
 - (ii) Dangerous or negligent weapons and firearms-related incidents involving protective force operations/personnel (i.e., accidental weapons discharge, personal wounding).
 - (iii) Loss or theft of DOE firearms, as per DOE O 473.2, *Protective Force Program*.
 - (iv) Intelligence incidents not involving the known or suspected loss of classified interests yet posing a potential threat to security interests.
 - (v) Blatant misuse of a security badge or pass to circumvent established access control procedures into a sensitive or restricted area.
 - (vi) Identified SNM inventory differences, shipper/receiver differences, or other alarms or indicator that involve Category IV quantity of nuclear material.

- (vii) Lapses in administrative procedures contributing to the misuse, misprocessing, or maintenance of security badges and passes.
 - (viii) Loss of security badges in excess of five (5) percent of total issued during one calendar year.
 - (ix) Lapses in administrative procedures contributing to the mismanagement or faulty application of the DOE Personnel Security Awareness and Personnel Assurance Programs.
 - (x) Inexplicably high rate/amount of loss or theft of Government property.
 - (xi) Failure to implement corrective action(s) in response to the occurrence of any third degree performance failure.
- (e) *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 Government. 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.

(f) *Minimum requirements for cost performance.*

- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
- (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
- (3) The contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the 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.

1.21 FAR 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) When requested by the Contracting Officer, 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.

**1.22 FAR 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).

**1.23 FAR 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; and (e) the specifications.

**I.24 FAR 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, reduction, 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).

**I.25 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).

L.26 DEAR 970.5226-3 COMMUNITY COMMITMENT (MONTH AND YEAR TBE)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

L.27 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 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 term 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" and "small disadvantaged business concern" mean a small business concern that represents, as part of its offer that--
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
- (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.

1.28 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 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) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with

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

- (d) The offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, 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; and
 - (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 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, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO Net as its source list 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 in 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; and
 - (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 which 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 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.

I.29 FAR 52.219-10 INCENTIVE SUBCONTRACTING PROGRAM (FEB 2000)

- (a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business, HUBZone small business, small disadvantaged business, and women owned small business concerns, respectively.
- (b) If the Contractor exceeds its subcontracting goals for small business, HUBZone small business and women-owned small business concerns in performing this contract, it will receive Blank percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts

(e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause.
- (c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-4 of the Federal Acquisition Regulation.

I.30 FAR 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 product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled "Disputes," from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**I.31 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
(FEB 1997)**

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

I.32 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

- (a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed Blank or the overtime premium is paid for work--
- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to the Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall--
- (1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

I.33 FAR 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.

**1.34 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT
(DEC 1996)**

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50.202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) in the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

1.35 FAR 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 (EEOC) 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 subparagraph (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.

L.36 FAR 52-222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

- (a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
 - (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the

Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.
- (6) Disseminate the Contractor's equal employment policy by--
 - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Pasting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including

minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a Contractor association, joint Contractor-union, Contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided, the Contractor--
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

- (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
- (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Contractor shall designate a responsible official to--
- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

I.37 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

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

I.38 FAR 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL 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 all 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 any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
 - (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability.

- (1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(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.

L39 FAR 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 handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as:
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

- (b) Postings.
- (1) The Contractor agrees to post employment notices stating--
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

- I.40 FAR 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.

I.41 DEAR 970.5226-1 DIVERSITY PLAN (MONTH AND YEAR TBE)

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 H. 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.42 FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)

- (a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.
- (b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

- (c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
- (d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.
- (f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--
 - (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and
 - (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of--
 - (i) The amount then allotted to the contract by the Government; or
 - (ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then

constitute the total amount allotted by the Government to this contract.

- (g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- (h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of--
 - (1) The amount previously allotted by the Government; or
 - (2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
- (l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

1.43 FAR 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 <i>(If none, insert "None")</i>	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 apparent successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or Subcontractor personnel or property.

- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's) meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document, which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
 - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor

shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

I.44 DEAR 970.5223-2 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (MONTH AND YEAR TBE)

- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
- (1) Executive Order 13101 of September 14, 1998, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition."
 - (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.

L45 FAR 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.

L46 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

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

"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

"Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

L47 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 1996)

(a) *Definition.* "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

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

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

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

1.48 FAR 52.225-8 DUTY-FREE ENTRY (FEB 2000)

- (a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
- (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the--
- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.
- (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

- (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if--
- (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
 - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the--
- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
 - (2) Government prime contract number;
 - (3) Identification of carrier;
 - (4) Notation "UNITED STATES GOVERNMENT, _____ [agency] _____, Duty free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

- (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
 - (6) Estimated value in United States dollars.
- (h) The Contractor shall instruct the foreign supplier to--
- (1) Consign the shipment as specified in paragraph (g) of this clause;
 - (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and,
 - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
 - (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the--
 - (1) Foreign supplies;
 - (2) Country of origin;
 - (3) Contract number; and
 - (4) Scheduled delivery date(s).
- (j) The Contractor shall include the substance of this clause in any subcontract if--
- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
 - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

I.49 FAR 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 USC 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

I.50 FAR 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 design, 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 and any employee of the Contractor is considered to be an employee of the agency.

- (c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

I.51 DEAR 970.5203-3 BUY AMERICAN ACT--SUPPLIES (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.

- (h) **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.)

1.52 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

- (a) 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 under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).
- (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 shall insert this clause, including this paragraph (c), in all subcontracts.

1.53 DEAR 970.5204-94 AUTHORIZATION AND CONSENT (XXX 2000)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity shall be a major consideration in determining whether to grant such request.

- (c) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts 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 \$25,000).
- (d) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities. Omission of an authorization and consent clause from any subcontract, including those valued less than \$25,000 does not affect this authorization and consent.

1.54 DEAR 970.5204-95 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (XXX 2000)

- (a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$25,000.

1.55 DEAR 970.5204-96 PATENT INDEMNITY - SUBCONTRACTS (XXX 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant

to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.56 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (JUNE 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

I.57 FAR 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.

1.58 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)

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 to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, 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 clause at FAR 52.230-2, Cost Accounting Standards, 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, 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 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, and 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 clause at FAR 52.230-2, Cost Accounting Standards, 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 CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

- (c) 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.
- (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 CAS clause, 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.

**1.59 FAR 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.

1.60 DEAR 970,5229-1 STATE AND LOCAL TAXES (MONTH AND YEAR TBE)

- (a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses

incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

- (c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

L.61 FAR 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.

1.62 FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986).

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

1.63 FAR 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 Regulations. 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, then 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 FAR 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 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)(ii)(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.

L.64 FAR 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.

1.65 FAR 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)(ii) 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 certification, 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.

L66 FAR 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 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 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 anytime are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(h)(2), 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.67 FAR 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.

I.68 FAR 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.

1.69 FAR 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.

L70 FAR 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 40 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.

**1.71 FAR 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
 - (2) 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:

I.72 FAR 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.

1.73 FAR 52.242-15 STOP-WORK (AUGUST 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.

**1.74 FAR 52.243-2 CHANGES--COST-REIMBURSEMENT (AUG 1987)
ALTERNATE II (APR 1984)**

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
- (1) Description of services to be performed.
 - (2) Time of performance, (i.e., hours of the day, days of the week, etc).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (a) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract ("note: not in contract").

1.75 FAR 52.244-2 SUBCONTRACTS (AUG 1998) ALT II(AUG 1998)

- (a) Definitions. As used in this clause--"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- (b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--
 - (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - (2) Is fixed-price and exceeds--

- (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (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:
- _____
- _____
- _____
- (f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of subcontract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting—

- (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (k) Paragraphs (d) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

1.76 FAR 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.

L.77 FAR 52.245-18 SPECIAL TEST EQUIPMENT (FEB 1993)

- (a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.
- (b) The Contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in this contract and the prior approval of the Contracting Officer has been obtained. The Contractor shall provide the Contracting Officer with a written notice, at least 30 days in advance, of the Contractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than \$5,000, and the following information on each item or component of equipment costing \$5,000 or more:
- (1) The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.
 - (2) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.
 - (3) The estimated cost of the item of special test equipment or component.
 - (4) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.
- (c) The Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Contractor. Such Government-furnished items shall be subject to the Government Property clause, except that the Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the 30-day notice period in paragraph (b) of this clause. However, unless the Government notifies the Contractor of its decision

to furnish the items within the 30-day notice period, the Contractor may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this contract.

- (d) The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.
- (e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Contractor shall comply with paragraph (b) above. In so complying, the Contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

1.78 FAR 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.

1.79 FAR 52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (FEB 1999)

The Contractor shall comply with the higher-level quality standard selected below. [If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]

Title Number Date Tailoring

* _____

* _____

* _____

* _____

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]

**1.80 FAR 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 Blank 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 Blank 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 Blank. This may be confirmed by contacting:

**1.81 FAR 52.247-58 LOADING, BLOCKING, AND BRACING OF FREIGHT
CAR SHIPMENTS (APR 1984)**

- (a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

- (b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.
- (c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.
- (d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

**1.82 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS
(JAN 1997)**

- (a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State Reasons]:

(End of Statement)

- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

I.83 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUNE 1997)

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are--
- (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both--
- (i) The Contracting Officer and
 - (ii) The Division of National Cargo:

Office of Cargo Preference
Maritime Administration (MAR 590)
400 Seventh Street SW
Washington, DC 20590
- Subcontractor bills of lading shall be submitted through the Prime Contractor.
- (2) The Contractor shall furnish these bill of lading copies—
- (i) Within 20 working days of the date of loading for shipments originating in the United States or
 - (ii) Within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.

- (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to--
- (1) Contracts at or below the simplified acquisition threshold;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353), and
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington, DC 20590
Phone: 202-366-4610

1.84 FAR 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.

1.85 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)

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

I.86 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

I.87 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (JAN 1991)

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

I.88 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

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

I.89 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, PROVIDED there is no change to the name, content, or sequence of the data elements on the form, and PROVIDED the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change

to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.90 DEAR 952.202-1 DEFINITIONS (OCT 1995)

“Head of Agency” means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

- (b) “Commercial component” means any component that is a commercial item.

- (c) “Commercial item” means--

- (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that--
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
 - (i) Modifications of a type customarily available in the commercial marketplace, or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor” modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining

whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are 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 other components.

- (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.

I.91 DEAR 952.204-2 SECURITY (SEP 1997)

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

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

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

regulations or requirements applicable to the particular level and category of classified information to which access is required.

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

I.92 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in