

classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

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

**I.93 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS
(APR 1994)**

- (a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.
- (b) The provisions of this clause shall be included in any subcontracts.

**I.94 DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR
INFLUENCE OVER CONTRACTOR (APRIL 1994)**

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

- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the Contracting Officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the Contractor creates an FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

L95 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (a) DOE intends to use U.S. Government license tags.

While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

L96 DEAR 970.5208-1 PRINTING (MONTH AND YEAR TBE)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

- (d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

**L97 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST
ALTERNATE I (JUN 1997)**

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

which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

- (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
 - (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
 - (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is

defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

- (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

1.98 DEAR 970.5204-1 COUNTERINTELLIGENCE (SEP 1997)

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

1.99 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (MONTH AND YEAR TBE)

- (a) For the purposes of this clause,

- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

- (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum.

Documentation of the System shall describe how the contractor will:

- (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with

the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may require that the subcontractor submit a Safety Management System for the contractor's review and approval.

I.100 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

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

I.101 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable

Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

I.102 DEAR 952.215-70 KEY PERSONNEL (MONTH AND YEAR TBE)

- (a) The personnel listed below or elsewhere in this contract [See Appendix A] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

I.103 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

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

the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material during the course of the contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:
 - (1) Negligence;
 - (2) Contributory negligence;
 - (3) Assumption of risk; or

- (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.
- (B) Any issue or defense as to charitable or governmental immunity; and
- (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location," which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
 - (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

- (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (7) Notification of litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to:
- (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

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

section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

**I.104 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS
(JUN 1995)**

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

- (a) Contracted airlines. Airlines participating in travel discounts are listed in Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contract airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301-15, Travel Management Programs. It stipulates that cost-reimbursable Contractor employees may obtain discount airfares by use of a Government Transportation Request (GTR), Standard Form 1169, cash, or personal credit cards. When the GTR is used, Contracting Officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the Contracting Officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the Contractor.
- (b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.
- (c) Car rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Contractor employees while traveling on official contract business are listed in the FTD.

(d) Procedures for obtaining service.

- (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount air fares may be ordered by the issuance of a GTR either directly to the Contractor, or to a Scheduled Airline Travel Office (SATO), or a Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity, Contractors may obtain discount airfares through a DOE office or a cooperating local travel agency when neither a SATO or FTMC is available. Some airlines allow the purchase of discounted airfares with cash or credit card.
- (2) In the case of hotel and motel accommodations, reservations may be made by the Contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
- (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

(e) Standard letter of identification. Contractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:

FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer)

I.105 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (MONTH AND YEAR TBE)

- (a) **Organization chart.** As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) **Supervisory representative of contractor.** Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.
- (c) **Control of employees.** The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.
- (d) **Standards and procedures.** The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

I.106 DEAR 970.5204-20 MANAGEMENT CONTROLS (MAY 2000)

The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other

reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

1.107 DEAR 970.5245-1 PROPERTY (MONTH AND YEAR TBE)

- (a) **Furnishing of Government property.** The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) **Title to property.** Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (c) **Identification.** To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or

custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

- (c) **Disposition.** The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.
- (3) **Protection of government property--management of high-risk property and classified materials.**
- (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
 - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
 - (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated,

hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

- (f) Risk of loss of Government property.
- (1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
- (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;
 - (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
- (ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:
- (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not

exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

- (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
 - (1) Shall immediately inform the contracting officer of the occasion and extent thereof,
 - (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefor, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used **only** for the performance of this contract.
- (i) Property Management.
 - (1) Property Management System.
 - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation,

and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

- (ii) In order for a property management system to be approved, it must provide for:
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

- (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
- (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the

succeeding contract as well as information for closeout of the predecessor contract.

- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the contractor's business; or
 - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

I.108 DEAR 970.5204-25 WORKMANSHIP AND MATERIALS (APR 1984)

- (a) Grade of workmanship and materials. Unless otherwise directed by the Contracting Officer or expressly provided for by specifications issued under this contract:
- (1) All workmanship shall be first class; and
 - (2) All articles, equipment and materials incorporated in the work are to be:
 - (i) New and of the most suitable grade of their respective kinds for the purpose;
 - (ii) In accordance with any applicable drawings and specifications; and
 - (iii) Installed to the satisfaction and with the approval of the Contracting Officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

- (b) Samples and test results. If the Contracting Officer so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

1.109 DEAR 970.5204-27 CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE Contractor in the same or related energy field or another organization except with the prior approval of the Contractor. If the Contractor believes, with respect to any employee who is employed full time on the contract work, that any proposed consultant or other comparable employment service may involve:

- (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration;
- (2) A significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's Contractors;
- (3) The Contractor's responsibility to report fully and promptly to DOE all significant research and development information; or
- (4) The patent provisions of the Contractor's contract with DOE, the Contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

I.110 DEAR 970.5204-33 PRIORITIES AND ALLOCATIONS (APR 1994)

The Contractor shall follow the rules and procedures of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed for contract performance.

I.111 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (MONTH AND YEAR TBE)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.112 DEAR 970.5204-43 OTHER GOVERNMENT CONTRACTORS (APR 1994)

The Government may undertake or award other contracts for additional work or services. The Contractor agrees to fully cooperate with such other Contractors and Government employees and carefully fit its own work to such other work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by Government employees.

I.113 DEAR 952.247-70 FOREIGN TRAVEL (FEB 1997)

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

I.114 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (MONTH AND YEAR TBE)

- (a) **Program Implementation.** The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) **Remedies.** In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) **Subcontracts.**
 - (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.
 - (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
 - (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.115 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (MONTH AND YEAR TBE)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

I.116 DEAR 970.5204-60 FACILITIES MANAGEMENT (NOV 1997)

Copies of DOE Directives referenced herein are available from the contracting officer.

- (a) **Site Development Planning.** The Government shall provide to the contractor development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.
- (b) **General design criteria.** The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.
- (c) **Energy management.** The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The

contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

- (d) **Subcontract requirements.** To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

1.117 DEAR 970.5204-103 PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (XXX 2000), ALTERNATE I (XXX, 2000)

(a) **Definitions**

- (1) **DOE licensing regulations** means the Department of Energy patent licensing regulations at 10 C.F.R. part 781.
- (2) **DOE patent waiver regulations** means the Department of Energy patent waiver regulations at 10 C.F.R. part 784.
- (3) **Exceptional Circumstance Subject Invention** means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 C.F.R. Part 401.3(e).
- (4) **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (5) **Made when used in relation to any invention** means the conception or first actual reduction to practice of such invention.
- (6) **Patent Counsel** means DOE Patent Counsel assisting the contracting activity.
- (7) **Practical application** means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are,

to the extent permitted by law or Government regulations, available to the public on reasonable terms.

- (8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.
- (9) (Alternate 1) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy.

(b) Allocation of Principal Rights

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
- (2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive,

nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

- (4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions. Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
- (i) uranium enrichment technology;
 - (ii) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (iii) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

- (i) DOE Steel Initiative and Metals Initiative;
- (ii) U.S. Advanced Battery Consortium; and
- (iii) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

- (6) **Treaties and international agreements.** Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [N/A], to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) **Contractor request for greater rights.** The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting a such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (8) **Contractor employee-inventor rights.** If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee inventor, after consultation with the

Contractor and with written authorization from the Contractor in accordance with 10 C.F.R. 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

- (9) Government assignment of rights in Government employees' subject inventions. If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 C.F.R. 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee, as DOE deems appropriate.
- (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor
- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
- (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;

- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (2) **Publication after disclosure.** After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.
- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.
- (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

- (i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.
- (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.
- (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 C.F.R. part 40.
- (d) **CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE NOTWITHSTANDING AN ADVANCE CLASS WAIVER**
- (1) Return of title to a subject invention. If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.
 - (2) Failure to disclose or elect to retain title. Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

- (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.
- (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.
- (5) Termination of advance class waiver. DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(c) MINIMUM RIGHTS OF THE CONTRACTOR

- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
- (2) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non transferable, on a case-by-case basis.

- (3) **Revocation or modification of a Contractor license.** DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 C.F.R. Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
- (4) **Notice of revocation or modification of a Contractor license.** Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 C.F.R. part 404 and DOE licensing regulations.
- (f) **CONTRACTOR ACTION TO PROTECT THE GOVERNMENT'S INTEREST**
- (i) **Execution and delivery of title or license instruments.** The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:
- (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

- (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
- (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.
- (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."
- (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions

involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

- (7) DOE approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.
- (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
- (9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) SUBCONTRACTS

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause - non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 C.F.R. 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject

to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (h)(5) of this clause.

- (3) Inclusion of patent rights clause - subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 C.F.R. 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) **REPORTING ON UTILIZATION OF SUBJECT INVENTIONS**

Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (i) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) **PREFERENCE FOR UNITED STATES INDUSTRY**

Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) **MARCH-IN RIGHTS**

With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) COMMUNICATIONS

The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) REPORTS

- (1) **Interim reports.** Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
- (2) **Final reports.** Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that

no such subcontracts were awarded during the contract performance period.

(m) **FACILITIES LICENSE**

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) **ATOMIC ENERGY**

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

(o) **CLASSIFIED INVENTIONS**

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

- (2) **Transmission of classified subject matter.** If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) **Inclusion of clause in subcontracts.** The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) **EXAMINATION OF RECORDS RELATING TO INVENTIONS**

- (1) **Contractor compliance.** Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) **Unreported inventions.** If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
- (3) **Confidentiality.** Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
- (4) **Power of inspection.** With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to

inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) **PATENT FUNCTIONS**

Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) **EDUCATIONAL AWARDS SUBJECT TO 35 U.S.C. 212**

The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) **ANNUAL APPRAISAL BY PATENT COUNSEL**

Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) **PUBLICATION**

The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) **TERMINATION OF CONTRACTOR'S ADVANCE CLASS WAIVER**

If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in

part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

L118 DEAR 970.5204-98 REFUND OF ROYALTIES (XXX 2000)

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- (b) During performance of this contract, if any additional royalty payments are proposed to be charged to the Government as costs under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (9) In addition, if specifically requested by the Contracting Officer, the contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also

includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.

- (d) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (e) The Contractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.
- (f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (f) of this clause, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government in a corresponding amount.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

L119 CLASSIFIED INVENTIONS – SPECIAL CLASSIFIED INVENTIONS

- (a) The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this

contract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

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

**I. 120 DEAR 970.5227-2 RIGHTS IN DATA TECHNOLOGY TRANSFER
(MONTH AND YEAR TBE)**

- (a) Definitions.
 - (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
 - (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.
 - (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
 - (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets

or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.
- (7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) The Government shall have:
 - (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where,

approved by DOE, appropriate instances of the DOE Work for Others Program;

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) of this clause ("Rights in Restricted Computer Software"); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.
- (2) The Contractor shall have:
- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium;

Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

Copyright (General).

- (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.
- (2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

- (e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

- (i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

- (ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or

other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

- (ii.) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.
- (?) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data

and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefore.

(3) **Permission for Contractor to Assert Copyright.**

- (i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
- (ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
- (iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such

copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

- (iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(ii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. ____ with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display

publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

- (vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (2)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65-- "Appeals."
- (vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs
- (viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the

Government so that the Government can distribute the data to the public.

- (4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

- (5) A similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-Genera;" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V, Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48

CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
- (i) Promptly submit written notice to the contracting officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.
- (g) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be

disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

- (g) Rights in Restricted Computer Software.
 - (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government

except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice--Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. _____ with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a {R-mo/yr}, may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (h) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

**1.121 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS--
MANAGEMENT AND OPERATING CONTRACTS (MONTH AND YEAR
TBE)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

**1.122 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE
(JUN 1997)**

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

L123 DEAR 970.5228-1 INSURANCE--LITIGATION AND CLAIMS (MONTH AND YEAR TBE)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c) (1) Except as provided in paragraph C(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
- (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

L.123 DEAR 970.5228-1 INSURANCE--LITIGATION AND CLAIMS (MONTH AND YEAR TBE)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c) (1) Except as provided in paragraph C(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
- (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—
- (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--
- (1) Which are otherwise unallowable by law or the provisions of this contract, or
 - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in DEAR 970.3102-1-2, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's—
- (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to

act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
 - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
 - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
 - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall —
 - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

- (2) Authorize Department representatives to collaborate with: In-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
- (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

I.124 DEAR 952.219-70 DOE MENTOR-PROTEGE PROGRAM (MAY 2000)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

I.125 DEAR 970.5215-2 MAKE-OR-BUY PLAN (MONTH AND YEAR TBE)

- (a) Definitions. Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor. Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site. Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

- (b) **Make-or-buy plan.** The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:
- (1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.
 - (2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.
- (c) **Submission and approval.** For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:
- (1) A description of each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
 - (2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:
 - (i) The contractor is not the least-cost performer, and
 - (ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

- (3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy;"
 - (4) Identification of potential suppliers and subcontractors, if known, and their location and size status;
 - (5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;
 - (6) A description of the impact of a change in current practice of making or buying on the existing work force; and
 - (7) Any additional information appropriate to support and explain the plan.
- (d) Conduct of operations. Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.
- (e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:
- (1) A lesser period is provided either for the total plan or for individual items or work effort;
 - (2) The circumstances supporting the make-or-buy decisions change; or
 - (3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

**1.126 FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY
(OCT 1997)**

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

The following contract clauses shall apply as appropriate to construction work performed under this contract whether performed by the Contractor or a subcontractor:

1.127 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION (JUL 1995)

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and basic records.

- (1) The Contractor or subcontractor shall maintain payroll and basic payroll records during the course of the contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts, exceeding \$100,000, the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

L.128 FAR 52.222-6 DAVIS-BACON ACT (FEB 1995)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans,

funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (b) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the

Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

1.129 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued

payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

1.130 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the

Superintendent of Documents, U.S. Government Printing Office,
Washington, DC 20402. The Prime Contractor is responsible for the
submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--
- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WHI-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the

Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

I.131 FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprenticeship in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefit in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State

Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

L132 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

L133 FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

- (a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- (b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

L134 FAR 52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

I.135 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

I.136 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.137 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR (a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

The following contract clauses shall apply as appropriate to construction work performed under this contract at a fixed-price whether performed by the Contractor or a subcontractor:

**I.138 FAR 52.222-17 LABOR STANDARDS FOR CONSTRUCTION WORK --
FACILITIES CONTRACTS (FEB 1988)**

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

wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

The following contract clauses shall apply as appropriate to construction work performed under this contract at a fixed-price whether performed by the Contractor or a subcontractor:

I.139 FAR 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within _____ calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than _____. The time stated for completion shall include final cleanup of the premises.

I.140 FAR 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984) ALTERNATE I (APR 1984)

The Contractor shall be required to (a) commence work under this contract within _____ calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than _____. The time stated for completion shall include final cleanup of the premises.

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by _____. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

I.141 FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

- (a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not

specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- (c) A claim under this clause shall not be allowed--
- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

**I.142 FAR 52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR
(APR 1984)**

The Contractor shall perform on the site, and with its own organization, work equivalent to at least ____ percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

I.143 FAR 52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any

part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

1.144 FAR 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site, (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.
- (b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this

contract, unless that understanding or representation is expressly stated in this contract.

1.145 FAR 52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by Blank.
- (b) Weather conditions
- (c) Transportation facilities

1.146 FAR 52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

- (a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

I.147 FAR 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

I.148 FAR 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

I.149 FAR 52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other Contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Government employees.

I.150 FAR 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to

be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

- (b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

1.151 FAR 52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

- (a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- (b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The

Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

I.152 FAR 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

- (a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

I.153 FAR 52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

I.154 FAR 52.236-13 ACCIDENT PREVENTION (NOV 1991)

- (a) The Contractor shall provide and maintain work environments and procedures which will: (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall--
- (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and
 - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for this purpose are taken.
- (c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

**I.155 FAR 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES
(APR 1984)**

- (a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates

charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

- (b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

I.156 FAR 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting

Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

I.57 FAR 52.236-16 QUANTITY SURVEYS (APR 1984)

- (a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.
- (b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.
- (c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

I.158 FAR 52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

I.159 FAR 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) (ALT. I) (FEB 1997)

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause: Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

I.160 FAR 52.236-26 PRECONSTRUCTION CONFERENCE (FFB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

I.161 FAR 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

- (a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigation and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.
- (b) Site visits may be arranged during normal duty hours by contacting:

Name: _____
Address: _____
Telephone: _____

The following contract clauses shall apply as appropriate to any portion of the work performed under this contract applicable to the Services Contract Act whether performed by the Contractor or a subcontractor:

I.162 FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service Employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
- (2)
 - (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
 - (ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.
 - (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each

affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

- (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
- (B) In the case of a contract modification an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
- (vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) **Adjustments of Compensation.** If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

- (f) **Successor Contracts.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (g) **Notification to Employees.** The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be

posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

- (h) **Safe and Sanitary Working Conditions.** The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) **Records.**
 - (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - (i) For each employee subject to the Act--
 - (A) Name and address and social security number;
 - (B) Correct wage classification or classifications, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation.
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (C)(2)(ii) of this clause will fulfill this requirement.

- (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
 - (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
 - (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) **Pay Periods.** The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) **Withholding of Payments and Termination of Contract.** The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

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

Government contracts by virtue of the sanctions imposed under section 5 of the Act.

- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (g) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to this amendment by Pub. L 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525)
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

- (r) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) **Tips.** An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) **Disputes Concerning Labor Standards.** The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning

labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.163 FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

Employee class	Wage-Fringe	Benefits
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I.164 FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351 et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

- (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.
 - (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement or or determination of any such adjustment and its effective date.
- (g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records

of the Contractor until the expiration of 3 years after final payment under the contract.

I.165 FAR 52.222-47 SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS APPLICABLE (MAY 1989)

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

I.166 DEAR 970.5204-90 FINANCIAL MANAGEMENT SYSTEM (MAY 2000)

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

I.167 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (MONTH AND YEAR TBE)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the

Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the process of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract. All occupational health records generated during the performance of Hanford-related activities will be maintained by the Hanford Environmental Health Foundation (HEHF) and 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.

- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause:
- (1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 - (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

- (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date of origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government

exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

- (g) **Subcontracts.** The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
- (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, **Integration of Environment, Safety, and Health into Work Planning and Execution**, or similar clause.

I.168 FAR 52.225-9 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIALS (FEB 2000)

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

"Component" means any article, material, or supply incorporated directly into construction materials.

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

"Cost of components" means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means

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

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

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference" means--

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to the construction material or components listed by the Government as follows:
- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that--
- (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to

the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

- (ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.
- (I) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including:
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (II) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

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

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE
COMPARISON**

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:
Foreign construction material

Domestic construction material

Item 2:

Foreign construction material

Domestic construction material

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

(Include other applicable supporting information.)

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

I.169 FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization," means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise," means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

"Interested party" means a prime Contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

- (b) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.
- (1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer shall refer the matter to the--

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and
Grants Administration
1849 C Street, NW, MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

- (2) The Contractor may request an adjustment under the Indian Incentive Program to the following:
- (i) The estimated cost of a cost-type contract.
 - (ii) The target cost of a cost-plus-incentive-fee prime contract.
 - (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
 - (iv) The price of a firm-fixed-price prime contract.

- (3) The amount of the equitable adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.
 - (4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.
- (c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer shall seek funding in accordance with agency procedures.

I.170 DEAR 970.5204-97 ROYALTY INFORMATION (XXX 2000)

- (a) Cost or charges for royalties. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

I. 171 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (MONTH AND YEAR TBD)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-

189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority.

- (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. Law 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.
- (2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) Definitions.

- (1) Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

- (2) **Intellectual Property** means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.
- (3) **Cooperative Research and Development Agreement (CRADA)** means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.
- (4) **Joint Work Statement (JWS)** means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:
 - (i) Purpose;
 - (ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;
 - (iii) Schedule for the work; and
 - (iv) Cost and resource contributions of the parties associated with the work and the schedule.
- (5) **Assignment** means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.
- (6) **Laboratory Biological Materials** means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products.

made under this contract by Laboratory employees or through the use of Laboratory research facilities.

- (7) **Laboratory Tangible Research Product** means tangible material results of research which:
- (i) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
 - (ii) Are not materials generally commercially available; and
 - (iii) Were made under this contract by Laboratory employees or through the use of Laboratory research facilities.
- (8) **Bailment** means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.
- (c) **Allowable Costs.**
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the contracting officer.
 - (2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall

be as provided in the clause entitled "Insurance—Litigation and Claims" of this contract.

- (d) **Conflicts of Interest—Technology Transfer.** The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:
- (1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;
 - (2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
 - (3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;
 - (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
 - (5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;
 - (6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;
 - (7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual

Property rights by the Contractor to any business or corporate affiliate of the Contractor;

- (8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Laboratory employee within the previous two years or to the company in which the individual is a principal;
 - (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and
 - (10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.
- (e) **Fairness of Opportunity.** In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.
- (f) **U.S. Industrial Competitiveness.**
- (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:
 - (i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

- (ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and
(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.
 - (2) If the Contractor determines that neither of the conditions in paragraphs (E)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.
 - (3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).
- (g) **Indemnity - Product Liability.** In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.
- (h) **Disposition of Income.**
- (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and

development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

- (2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.
- (3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer.
- (i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in: all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

- (j) **Technology Transfer Affecting the National Security.**
- (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.
 - (2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.
 - (3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.
- (k) **Records.** The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (f) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

- (l) **Reports to Congress.** To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a **technology transfer plan** for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.
- (m) **Oversight and Appraisal.** The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.
- (n) **Technology Transfer Through Cooperative Research and Development Agreements.** Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.
 - (1) **Review and Approval of CRADAs.** (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.
 - (ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.
 - (iii) Within ninety (90) days after submission of a JWS, the contracting officer shall approve, disapprove or request modification to the JWS. If a modification is required, the contracting officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The contracting officer

shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

- (iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the contracting officer. The contracting officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the contracting officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.
 - (v) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter. However, the contracting officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.
- (2) Selection of Participants. The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:
- (i) Give special consideration to small business firms, and consortia involving small business firms;
 - (ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;
 - (iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

- (iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.
- (3) Withholding of Data.
- (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.
 - (ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.
- (4) Work For Others and User Facility Programs.
- (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor

agrees form prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

- (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.
 - (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.
- (5) Conflicts of Interest.
- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –
 - (1) *holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;*

- (2) *receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or*
- (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
- (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
- (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.
- (o) **Technology Transfer in Other Cost-Sharing Agreements.** In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

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

SECTION J

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**PART III - LIST OF DOCUMENTS
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SECTION J

APPENDIX A

The positions listed below represent the current list of key positions.

R. Hanson	President & CEO
D. Van Leuven	Chief Operating Officer
Vacant	Spent Nuclear Fuels Project
E. Aromi	Waste Management Project
G. Jackson	Nuclear Material Stabilization Project
J. Wood	Site Services
L. Olguin	Project Operations Center
J. Curtis	Counsel
Vacant	Business Services

APPENDIX B

ADVANCE UNDERSTANDING ON PERSONNEL COSTS POLICIES AND PROCEDURES

1.0 INTRODUCTION

This Advance Understanding sets forth the basis for determining the allowability of those Contractor and Major Subcontractor human resource management policies and related expenses that have cost implications under the Contract. This agreement is intended to cover the majority of the human resources costs incurred by the Contractor for work performed by employees assigned to work tasks authorized by the Richland Operations Office (RL) in accordance with this Contract. Costs not specifically addressed in this advance understanding will be treated in accordance with applicable FAR cost principles.

The Contractor and Major Subcontractors shall select, employ, manage, and direct the work force; and, apply the policies set forth herein in general conformity with the methods used in the Contractor's private operations insofar as those methods are consistent with this Contract. The Contractor shall use effective management review procedures and internal controls to assure that the allowable costs set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

The Contractor shall promptly furnish all reports and information required or otherwise indicated in this Appendix B to the Contracting Officer or designated representative. The Contractor and the DOE recognize that other data requests may be made from time to time and the parties agree to cooperate in meeting such requests.

2.0 GENERAL

Subject to the specific limitations, conditions, and exclusions of Subpart 31.2 of the Federal Acquisition Regulations (FAR) as supplemented by DOE Acquisition Regulation (DEAR) 931.2, and to the special conditions set forth below, personnel and related costs incurred for work under this contract by the Contractor and Major Subcontractors in accordance with the Contractor's corporate-wide policies consistently and uniformly applied throughout the corporation's domestic operations, and which have been furnished to and accepted by DOE-RL, are allowable. Such policies will be summarized and submitted in the form of a Personnel Policies Manual applicable to this Contract.

Revisions to corporate wide or contract-only policies and employee benefit plans which increase costs will be provided to DOE-RL for review for allowability prior to incurrence of costs.

3.0 DEFINITIONS

Contractors

The Contractor – Fluor Hanford, Inc.

Major Subcontractors – Subcontractors included in the terms of this Appendix B and throughout this contract are:

Numatec Hanford Corporation
Duratek Federal Services of Hanford, Inc.

In addition, DynCorp Tri-Cities Services, Inc. and Protection Technology Hanford are included in the terms of this Appendix B.

Credited Service – Length of service for employees shall mean employment with the Contractor or Major Subcontractors including recognized credited service with predecessor DOE Hanford Contractors. Service credit will be applied in accordance with this Contract and the Contractor's service credit policies regarding leave accrual, severance pay, and other benefit programs.

FAR Federal Acquisition Regulation

Workweek – The basic (or regular) workweek shall be 40 hours. Alternative workweeks may be established with the approval of the Contracting Officer.

4.0 DIRECT COMPENSATION

The Contractor shall submit its Compensation Program applicable to work under this Contract to the Contracting Officer for initial approval. Proposed Compensation Program design changes which affect costs will also be submitted for review and approval by the Contracting Officer.

4.1 ADMINISTRATION OF WAGES AND SALARIES OF NONREPRESENTED EMPLOYEES

Administration of Wages and Salaries of Nonrepresented Employees shall be carried out in accordance with sound wage and salary administration principles and in a manner which shall provide for equitable treatment of personnel on a definitive, systematic basis consistent with economic business practices and judicious expenditure of public funds and which shall result in payment of total compensation to individual employees conforming to the standards of reasonableness as contemplated by FAR Subpart 31.205-6.

- 4.1.1 Compensation Increase Plan – Prior to each salary program year, the Contractor will develop and justify, in a manner prescribed by the Contracting Officer, a Compensation Increase Plan for exempt employees and a Compensation Increase Plan for non-exempt, non-bargaining employees for review and approval. The funds are calculated as a percentage of exempt and non-exempt, non-bargaining base payroll at the end of the prior salary year, expressed as an annualized amount. The plans will include a separate fund for retention and recruitment incentives as defined under 4.1.8.

All increases are charged to the fund on an annualized basis. Once an individual's salary increase is charged to the fund, reuse of that amount, i.e., recovery, for any other purpose during the salary year is unallowable. If an individual terminates before receiving an increase, the portion of the fund allocated for that increase may remain in the fund.

The Contractor shall also provide a copy of the annually developed salary guidelines prepared for supervisory use, indicating the parameters for granting various increases based on employee performance and current salary.

The dollar amounts of the funds shall be subject to review and adjustment by the Contracting Officer upon a significant reduction in Contractor employment levels, as in a reduction-in-force.

- 4.1.2 Individual Employee Salary Approval – The base annual salary costs for employees of the Contractor designated as Key Personnel are reimbursable only to the extent each such salary has been approved on DOE Form 3220.5, Application for Contractor Compensation Approval, or other approved form, by the Contracting Officer.

The Contractor will provide supporting information with DOE Form 3220.5 (or other approved form) on all such compensation actions in advance of the effective date.

- 4.1.3 Incentive Compensation, Bonuses and Project Assignment Allowances will not be allowable costs under this Contract unless specifically approved in advance by the Contracting Officer.

- 4.1.4 Salary Structures – The Contractor shall establish separate salary structures containing position grades, classifications, and salary ranges for exempt and for non-exempt, non-bargaining employees who are assigned to work on the Contract. The structures shall be submitted to the Contracting Officer for review and approval in advance of incurrence of costs. No salary above the maximum of the salary range shall be allowable except in those cases where a "red circle" rate is authorized by the Contracting Officer.

- 4.1.5 Overtime Control Plan – The Contractor shall submit to the Contracting Officer for approval an annual overtime control plan that includes at a minimum (1) an overtime

premium fund (maximum dollar amount); (2) specific controls for casual overtime for nonexempt employees; and (3) an evaluation of alternatives to the use of overtime.

The Overtime Control Plan shall also include the following historical data for non-exempt and exempt employees:

- (1) Total cost of overtime;
- (2) Total cost of straight-time;
- (3) Overtime cost as a percentage of straight-time cost;
- (4) Total overtime hours;
- (5) Total straight-time hours; and
- (6) Overtime hours as a percentage of straight-time hours.

Exempt employees are not eligible for overtime pay except as approved by the Contracting Officer.

The Contractor shall submit to the Contracting Officer for approval any additional overtime premium funds or plan changes based on mission requirements.

The Contractor shall submit any request for an extended workweek to the Contracting Officer for approval. An extended workweek is a workweek regularly scheduled and established in excess of the basic workweek of 40 hours and for a period of more than four consecutive weeks.

Overtime pay shall be based on a 40-hour workweek.

Overtime work performed by employees of affiliate companies of the Contractor or Major Subcontractors, assigned to Contract work on a temporary basis, will be administered and paid in accordance with the policies of the affiliate.

- 4.1.6 Premium Pay - The Compensation Program shall contain provisions for any established premium payments to employees, such as overtime, shift differential and special qualification or certification pay.
- 4.1.7 Compensation Reports - The Contractor shall submit reports and information relating to the administration of wages, salaries and benefits as the Contracting Officer may require from time-to-time to evaluate the reasonableness of the Contractor's total compensation program.
- 4.1.8 Recruitment and Retention Incentives - Recruitment and retention incentives are considered necessary to attract and retain certain core critical skills under current market conditions. A plan for recruitment and retention will be included as a component of a

variable pay plan within the annual compensation increase plan. The recruitment and retention plan will contain projected critical skill needs, with justification for each critical skill. In the event critical skill needs change during the year, after Contracting Officer review and approval of the compensation increase plan, the Contractor shall submit a request for Contracting Officer review and approval to modify critical skill needs in the plan.

The Contractor will establish an annual pool exclusive of any merit funds for which incurred costs are allowable under the Contract subject to the following conditions:

1. The Contractor will submit an annual report for actual recruitment/retention incentives paid during the government fiscal year to include identification of the individual, previous annual salary, proposed annual salary, amount of incentive incurred, and brief description of rationale supporting the necessity. The annual report will be a part of the annual salary reporting required by DOE Order 350.1.
2. The Contractor will annually review the approved annual pool amount to determine if a material change in the annual amount for recruitment/retention incentives is necessary. If so, the Contractor shall formally request advance approval from the Contracting Officer.
3. The Contractor will establish a separate account for recording all retention/recruitment incentive costs subject to this provision.
4. Recruitment or retention incentives may be provided for both exempt and non-exempt employees based upon a critical need. The lump sum amount of incentives should not exceed 20 percent of the employee's annual salary, however, if necessary, the Contractor may exceed that target ceiling when written approval has been obtained from the Contracting Officer.
5. Recruitment incentives shall not be used for attracting a prospective employee that predominately works on another DOE Contract. Exceptions may be approved in advance by the Contracting Officer.
6. Contractor employees will receive the recruitment/retention incentives in the form of a one-time lump sum payment and/or in the form of a one-time increase to their personal time bank.
7. Employees who receive recruitment incentives and voluntarily leave within 12 months of receipt of the incentive will be required to pay back the incentive. Employees transferring from the PHMC to an affiliate company will be

considered as a voluntary termination and will be required to reimburse the recruitment incentive in accordance with this provision.

8. PITMC employees, who receive a retention incentive and voluntarily leave before the end of the period for which the retention incentive was provided, will be required to pay back the full amount of the paid incentive. Employees transferring from the PHMC to an affiliate company will be considered as a voluntary termination and will be required to reimburse the retention incentive in accordance with this provision.
9. Regardless of the Contractor's ability to collect recruitment/retention amounts from employees who have voluntarily terminated employment, such amounts are unallowable under the Contract. In addition, attorney and collection service fees in pursuit of collection of retention/recruitment amounts are unallowable.

4.2 COMPENSATION - EMPLOYEE WELFARE AND OTHER BENEFIT PLANS

4.2.1 General

Net costs of employer payments for the following non-statutory employee benefit plans, as related to work under this Contract, are allowable subject to the limitations and conditions set out in FAR 31.2. The initial terms and conditions of the plans shall be submitted to and must be approved by the Contracting Officer. Copies of employee communications, such as Summary Plan Descriptions, shall be provided to DOE when issued. Costs incurred in the administration of the following plans are allowable:

- Life Insurance (Basic, AD&D, Personal Accident, Dependent, other)
- Disability Plans (Short Term and Long Term)
- Medical Insurance Plan (Indemnity, HMO, PPO, other)
- Dental Insurance Plans
- Vision Plan
- Retiree Medical and Life Insurance Plans

Other Benefit Plans

- Flexible Spending Account(s) and similar programs (e.g. VEBA's)
- Employee Assistance Program
- Other supplemental employee paid plans such as Group Universal Life, Long Term Care

4.2.2 Separation Pay

- A. The cost of separation pay allowances for employees with one (1) or more years of continuous service, who are involuntarily separated, will be allowable in accordance with the Contractor's policy. The initial policy, and any changes thereto which increase costs, require the approval of the Contracting Officer.
- B. In the event that responsibility for performance of work and services or operation of part or all of the government-owned facilities under this Contract (including standby protection and maintenance functions) is assumed by another Contractor or Government agency, employees who are transferred to the employ of, or who are offered employment within their same classification or at positions of comparable responsibility by such Contractor or agency, which employment will commence within thirty (30) days after being laid off, will not be paid any separation pay allowance.

4.2.3 FAS 106 Valuation – The Contractor will provide a copy of the FAS 106 Valuation annually to the DOE.

4.2.4 Multiple Employer Welfare Arrangement (MEWA) – The Contractor shall, as a separate legal entity, administer the Hanford Employee Welfare Trust.

4.3 GROUP PENSION PLANS

4.3.1 General Costs of the Contractor's and Major Subcontractors' participation with other Hanford Site Contractors in the Operations and Engineering Pension Plan, the Hanford Contractors Multi-Employer Pension Plan for HAMTC Represented Employees, and the Hanford Guards Union Pension Plan, or other plans as approved by the Contracting Officer, will be allowable for the purpose of providing retirement benefits only to employees under the Contract, and former employees of predecessor Hanford Contractors, who are eligible to participate in one or more of the plans in accordance with their terms. The plans must be established and maintained as qualified defined benefit pension plans under the regulations of the Internal Revenue Code (IRC). The plan and trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of the Contracting Officer. With respect to each of the plans, the parties agree as follows:

4.3.2 Administration of the Plans

- A. Costs of employer contributions incurred under the terms of said plans and costs incurred in the course of their administration are allowable to the extent approved by the Contracting Officer. At DOE's request, the Contractor shall provide an

itemization of costs incurred for administration. The plan fund, not the Contractor, shall be liable for costs incurred in the course of administration.

- B. The Contractor will provide to DOE copies of the following annual reports:
- (1) Accounting reports and annual actuarial valuations. The reports and valuations will include at least the information specified in DOE Order 350.1, Chapter VI.
 - (2) DOL Form 5500 with schedules and attachments, as submitted to the Department of Labor each year.
 - (3) Financial Accounting Standards Board (FASB) Statement 87 Report. A copy of the FASB 87 report is prepared each year to satisfy the expense-reporting requirement of the Office of Management and Budget.

The final accounting period shall end with the effective date of Contract termination or expiration.

- C. Actuarial gains and losses developed by annual valuations will be taken into account for purposes of establishing contributions to the Plan as soon as reasonably possible and consistent with requirements of the Employee Retirement Income Security Act of 1974, amendments thereto, and any other applicable laws.
- D. The aggregate annual contribution to the pension fund may range from the minimum specified by the Internal Revenue Code (IRC) Section 412(b) to the amount necessary to fully fund the year-end expected current liability. However, the aggregate annual contribution to each plan shall be no less than the minimum specified by IRC Section 412(b) nor greater than the tax-deductible limit specified by the IRC Section 404. All contributions to each pension fund shall equal the total amount currently attributable to participants in the plans. These contributions will be based on the actuarial valuation, as determined by the Employee Retirement Income Security Act of 1974, as amended valuation for the most recent plan year. The fund shall be a trust.
- E. If requested by DOE to do so, the Contractor will participate in pension plans established on a multiple or multi-employer basis applicable to some or all DOE prime cost-type Contractors on the Hanford Site.
- F. The Contractor will take no action concerning the termination, merger, or spin-off or other action affecting the status of the plans as separate contract-only plans without the approval of the Contracting Officer. If the Contractor and DOE agree

to terminate a defined benefit pension plan, the provisions of Sections 4.3.3 and 4.3.4 below will apply.

- G. Unless otherwise required by federal law or resulting from the collective bargaining process, no amendment to any of the pension plans shall result in allowable costs under this contract if the adoption date of such amendment is later than twelve (12) months before the termination or expiration date of the Contract.

4.3.3 Actions Required at Contract Termination or Expiration

- A. No Replacement Contractor - If this contract expires or terminates without a replacement contractor, the DOE and the Contractor shall meet to determine the ultimate disposition of all pension, post-retirement welfare, and post-employment plans.
- B. Replacement Contractor Situation - In the event of reassignment of all or a portion of the Contractor's work under this contract to a replacement Contractor(s) or upon termination or expiration of said contract followed by a replacement Contractor(s) the Contractor will assist DOE in the necessary arrangements for the replacement Contractor(s) to take over the plans, plan assets and plan liabilities. Such arrangements shall include preserving for these employees their accrued pension benefit and vesting service time under the Contract by carrying forward Contractor pension service time to the replacement Contractor. Granting of such service credits shall not result in duplicate benefits for the same service time.
- C. Change of Plan Sponsor - The DOE shall have the unilateral right to change a plan sponsor upon termination or expiration of the Contract.
- D. Determination of Contract Service Pension Plan Assets and Liabilities
- (1) Contract Service Assets - Contract Service Assets shall be determined in accordance with 4.3.2 B(1) above and shall include all assets attributable to DOE-funded employer contributions (including investment earnings thereon) and the employee accumulations (including investment earnings thereon) determined at current market value until the date of payment or transfer.
 - (2) Liabilities for Present and Future Benefits - The Contractor's actuary shall quantify liabilities for employee plan benefits as of the contract termination or expiration date.

- 4.3.4 Financial Requirements – Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or spin-off shall be placed in short-term investment funds from a date stipulated by the Contracting Officer until the actual date of funds transfer.

Successor Contractor. Any DOE-reimbursed assets awaiting transfer to a successor trustee or to DOE shall be actively managed by the Contractor until the successor trustee or DOE is able to assume stewardship of those assets.

- 4.3.5 Special Programs – The Contractor shall request DOE prior approval for each early-cut program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit. Such costs are unallowable until specifically approved by the Contracting Officer.

4.4 GROUP SAVINGS PLANS

The Contractor and Major Subcontractors will maintain three savings plans for employees who are eligible to participate in accordance with their terms; two plans for bargaining unit employees and one plan for non-bargaining employees (exempt and nonexempt). The plans must be established and maintained as qualified defined contribution plans under the regulations of the Internal Revenue Code. The plan and trust documents and any amendments thereto which effect substantive changes or increase costs are subject to the approval of the Contracting Officer. With respect to the Plans, the parties agree as follows:

- A. Costs of employer matching contributions incurred and accrued under the terms of the plans are allowable. The plan fund, not the Contractor, shall be liable for the costs incurred in the course of its administration.
- B. The Contractor will provide DOE with annual accounting reports within seven months after the close of a plan year. In addition, a copy of IRS Form 5500 will be provided to DOE each year when prepared by the Contractor.
- C. Employee forfeitures of accrued benefits shall be in accordance with the terms of the Plan and such forfeitures shall be used to reduce Contractor contributions made on behalf of remaining participating employees.
- D. In the event of Contract expiration or termination, the Contractor, if requested by DOE to do so, will transfer to a replacement Contractor the Plan, plan assets and plan liabilities.

- E. The Contractor will take no action concerning termination, merger, spin-off, or other action affecting the status of the plans as separate, contract-only plans without the approval of DOE.

4.5 PAID ABSENCES

- 4.5.1 Personal Time Off – A Personal Time Bank (PTB) is established for eligible employees. Absences for leisure time off, personal time off, facility closure days (holidays), time away from work due to illness or injury, family emergencies or medical/dental appointments will be charged to the employee's PTB account if the employee wishes to receive pay for the absence. All absences of more than four hours will be charged to an exempt employee's PTB account.

Eligible Employee: Regular full-time or part-time exempt and salaried non-exempt employees.

Pay Rate: Hours taken as time off will be paid at the employee's base salary rate in effect at the time of absence.

Composition: Accrual rates will include the following:

Vacation:	0-5 years service	80 hrs/yr
	>5 years service	120 hrs/yr
	>10 years service	160 hrs/yr
	>20 years service	200 hrs/yr

Holidays: 72 hours designated as facility closure
Days 8 hours designated by employee as floater:

The facility closure days include New Year's Day, President's Day*, Memorial Day*, July 4th, Labor Day, Thanksgiving Day, Friday After Thanksgiving, December 24, and Christmas Day.

*These days are observed on the day specified by Federal Law

Sick Personnel:	Exempt	40 hrs/yr
	Salaried non-exempt	56 hrs/yr

Time Not Included: Absences for the following will not be taken from an employee's PTB account: Death in the Family (up to 5 days)

per event), Absences of less than four hours for exempt employees, excused absence (EA) Time (8 hours per year for employees who work north of the Wye Barricade), Jury Duty, Military, Road Conditions, Plant Injury, Volunteerism, and miscellaneous absences as defined in the PTB Policy.

Cash Out Provision: During periods of active service, eligible employees may request a partial cash out of accrued PTB hours.

- Employees will be allowed one cash out in a calendar year except in those cases where the employee is terminating.
- At least 120 hours must remain in the employee's account after the cash out.
- The maximum hours which may be cashed out in a calendar year are 120 hours in 2000 and thereafter.
- The rate of cash out will be at the base salary at the time of cash out. Cash out will be in one-hour increments.
- Employees may opt to put the cash directly into their after tax Savings Plan account.

Maximum PTB Hours: An employee may accumulate up to a maximum number of PTB hours as follows:

- In 2000 900 hours
- In 2001 and thereafter 1000 hours

EXEMPT ACCRUALS (hours per biweekly pay period)

	<u>2000 and thereafter</u>
0-5 years of service	7.69
5-10 years of service	9.23
10 to 20 years of service	10.77
More than 20 years of service	12.31

SALARIED NONEXEMPT ACCRUALS (hours per biweekly pay period)

	<u>2000 and thereafter</u>
0-5 years of service	8.31
5-10 years of service	9.85
10-20 years of service	11.38
More than 20 years of service	12.92

4.6 CORPORATE EMPLOYEES

Certain employees of the Contractor and Major Subcontractors transferred from an affiliate to work under the Contract may continue to participate in their corporate group insurance, pension and savings, and severance pay plans. Costs for such continued participation while assigned to work under the Contract shall be billed to the Contract pursuant to applicable FAR cost principles and/or Cost Accounting Standards. The DOE shall have no further obligation for costs incurred by the parent organizations on behalf of such employees after reassignment or termination from Contract work.

4.7 HOME OFFICE PERSONNEL SUPPORT

Contractors' corporate home office personnel assigned to the PHMC, i.e. Home Office Personnel Support (HOPS), shall be paid under Fluor's government business units' financial disclosure statement and reimbursed in accordance with its approved Government rates.

5.0 TRAVEL AND RELOCATION COSTS

Necessary and reasonable expenses incurred by employees and prospective employees for travel and relocation at the request of the company in connection with work under this Contract are allowable, subject to applicable provisions of FAR Subpart 31.2. Project Assignment Allowances and outbound relocation costs upon termination or expiration are unallowable beyond that recognized under Section 3161 (see H Clause, Transfer Relocation Allowance). In accordance with these regulations, Contractor employees, including Major Subcontractors, transferred from corporate entities will be administered under the Contractor's common Relocation and Travel policies which are subject to the review and approval of the Contracting Officer. Special allowances for relocation of employees of Numatec shall be as set out in Schedule L, attached hereto.

6.0 COLLECTIVE BARGAINING AGREEMENTS

The Contractor will consult with DOE on all parameters before and during negotiations.

7.0 WORK FORCE RESTRUCTURING

The Contractor will comply with the requirements of the applicable Hanford Site Work Force Restructuring Plan, which implements Section 3161 of the National Defense Authorization Act for Fiscal Year 1993. Costs associated with the implementation shall be allowable for those activities described in the applicable Plan.

8.0 EMPLOYEE MORALE, RECREATION, SERVICE AWARDS, AND WELFARE PROGRAMS

Costs incurred for such programs are allowable in an amount not to exceed thirty-five dollars (\$35.00) per employee per year.

SCHEDULE 1

**SPECIAL ALLOWANCES FOR COGEMA/SGN EMPLOYEES
ASSIGNED TO NUMATEC**

Changes were made to this schedule as a result of Modification M086. The changes and Schedule are considered business sensitive and have been redacted. The schedule contains the changes that were redacted and approved by the Contracting Officer.

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

SECTION J

APPENDIX C

DOE DIRECTIVES

Federal Regulations and applicable Washington Administrative Code (i.e., WAC 173-303, etc.) governing DOE activities, and the following Directives are applicable to work and activities conducted/accomplished by Contractors at the Hanford Site. In addition, the applicability of given Environment, Safety, and Health (ES&H) Directives to a specific facility or work activity/project may be determined through the Standards/Requirements Identification Document (S/RID) process, as approved by the appropriate DOE authority. Upon approval of an S/RID, that set of requirements is the ES&H directive/requirements set applicable to the facility, work/activity or project and supersedes the ES&H directives included in this list of Directives.

The Contractor and RL will work cooperatively in reviewing the current list of DOE Directives evaluating them for value added, efficiency of operations, redundancy with other laws and regulations and conflict with Fluor Corporate and best commercial practices. The review will result in the Contractor providing a request for approval to the Contracting Officer to eliminate selected Directives by April 30, 2001. The results will be incorporated by the Contracting Officer within 60 days of the Contractor's submittal. New Directives incorporated by this modification or Directives proposed for inclusion in the future per implementation of the RL RIMS will be assessed following the FH Scope, Cost, and Management Process (SCMP) and will include, as appropriate, requests for elimination or waivers and/or Baseline Change Requests, as necessary.

DOE ORDERS AND NOTICES

<u>ORDER NUMBER</u>	<u>CHANGES</u>	<u>TITLE</u>
DOE O 110.3		Conference Management
DOE O 130.1		Budget Formulation Process
DOE M 140.1-1A		Interface with the Defense Nuclear Facilities Safety Board
DOE N 142.1		Unclassified Foreign Visits and Assignments
DOE O 151.1	1&2	Comprehensive Emergency Management System
DOE M 200.1-1		Telecommunications Security Manual

		(Except Chapter 2)
DOE M 200.1-1	9	Public Key Cryptology and Key Management
DOE O 200.1		Information Management Program
DOE N 205.1		Unclassified Cyber Security Program
DOE N 205.2		Foreign National Access to DOE Cyber Systems
DOE N 205.3		Password Generation, Protection, and Use
DOE O 210.1	1&2	Performance Indicators and Analysis of Operations Information
DOE O 224.1		Contractor Performance-Based Business Management Process
DOE O 225.1A	1	Accident Investigations
DOE O 231.1	1&2	Environment, Safety, and Health Reporting
DOE O 232.1A		Occurrence Reporting and Processing of Operations Information
DOE M 232.1-1A		Occurrence Reporting and Processing of Operations Information
DOE O 241.1		Scientific and Technical Information Management
DOE O 251.1A		Directives System Order
DOE O 252.1		Technical Standards Program
DOE O 311.1A		Equal Opportunity and Diversity Program
DOE O 359.1	1	Contractor Human Resources Management Programs
DOE O 413.1		Management Control Program
DOE O 413.3		Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1A		Quality Assurance
DOE O 420.1	1&2	Facility Safety
DOE O 425.1A		Startup and Restart of Nuclear Facilities
DOE O 430.1A		Life Cycle Asset Management
DOE O 430.2		In-House Energy Management
DOE M 435.1-1		Radioactive Waste Management Manual
DOE O 435.1		Radioactive Waste Management
DOE O 440.1A		Worker Protection Management for DOE Federal and Contractor Employees
DOE O 440.2	1&2	Aviation
DOE O 442.1		Department of Energy Employee Concerns Program
DOE O 460.1A		Packaging and Transportation Safety
DOE O 460.2	1	Departmental Materials Transportation and Packaging Management
DOE O 461.1		Packaging and Transfer or Transportation of Materials of National Security Interest
DOE O 470.1	1	Safeguards and Security Program

DOE O 470.2A		Security and Emergency Management Independent Oversight and Performance Assurance Program
DOE M 471.1-1		Identification and Protection of Unclassified Controlled Nuclear Information Manual
DOE O 471.1A		Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.2A		Information Security Program
DOE M 471.2-1B		Classified Matter Protection and Control Manual
DOE M 471.2-2		Classified Information Systems Security Manual
DOE M 472.1-1		Personnel Security Manual
DOE O 472.1B		Personnel Security Activities
DOE M 473.2-1		Firearms Qualification Courses Manual
DOE M 473.2-2		Protective Force Program Manual
DOE O 473.2		Protective Force Program
DOE N 473.4		DOE Budgets
DOE N 473.5		Security Area Vouching and Piggybacking
DOE N 473.6		Security Conditions
DOE N 473.7		Explosive Detection Program
DOE M 474.1-1		Manual for Control and Accountability of Nuclear Materials
DOE O 474.1		Control and Accountability of Nuclear Materials
DOE M 474.1 2	2	Nuclear Materials Management and Safeguards System Reporting and Data Submission
DOE M 475 1-1		Identifying Classified Information
DOE O 481.1		Work for Others (Non Department of Energy Funded Work)
DOE O 534.1		Accounting
DOE O 551.1A		Official Foreign Travel
DOE 1220.1A	1	Congressional and Intergovernmental Affairs
DOE 1230.2		American Indian Tribal Government Policy
DOE 1270.2B		Safeguards Agreement with the International Atomic Energy Agency
DOE 1340.1B		Management of Public Communications Publications and Scientific, Technical and Engineering Publications
DOE 1350.1	1	Audiovisual and Exhibits Management
DOE 1450.4		Consensual Listening-In To Or Recording Telephone/Radio Conversations
DOE 2030.4B		Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE 2100.8A		Cost Accounting, Cost Recovery, & Interagency Sharing of Information Technology Facilities
DOE 2110.1A	1&2	Pricing of Departmental Materials and Services

DOE 4330.4B		Maintenance Management Program
DOE 5400.1		General Environmental Protection Program
DOE 5400.5	1&2	Radiation Protection of the Public and the Environment
DOE 5480.19	1	Conduct of Operations Requirements for DOE Facilities
DOE 5480.20A		Personnel Selection, Qualifications, and Training Requirements for DOE Nuclear Facilities
DOE 5480.21		Unreviewed Safety Questions
DOE 5480.22	1&2	Technical Safety Requirements
DOE 5480.23	1	Nuclear Safety Analysis Reports
DOE 5480.30		Nuclear Reactor Safety Design Criteria
DOE 5480.4	1 4	Environmental Protection, Safety, and Health Protection Standards
DOE 5530.1A		Accident Response Group
DOE 5530.2		Nuclear Emergency Search Team
DOE 5530.3	1	Radiological Assistance Program
DOE 5530.4		Aerial Measuring System
DOE 5530.5	1	Federal Radiological Monitoring and Assessment Center
DOE 5560.1A		Priorities and Allocations Program
DOE 5610.13		Joint Department of Energy/Department of Defense Nuclear Weapon Safety, Security, and Control Program
DOE 5610.2	1	Control of Weapon Data
DOE 5632.1C		Protection and Control of Safeguards and Security Interests
DOE M 5632 1C-1	1	Manual for Protection and Control of Safeguards and Security Interests (Except Chapter III, paragraphs 1, 2, and 4 through 9)
DOE 5660.1B		Management of Nuclear Materials
DOE 5670.1A		Management and Control of Foreign Intelligence
DOE 5670.3		Counterintelligence Program
DOE 6430.1A		General Design Criteria
DOE/RW-0333P	Rev. 8	Quality Assurance Requirements and Descriptions
SEN-72-90		DOE Policy on Signatures of RCRA Permit Applications
SEN-35-91		Nuclear Safety Policy

S/RIDS

DOC. NUMBER	REVISION	TITLE
HNF-SD-MP-SRID-002	3	Fluor Hanford Contract
HNF-SD-MP-SRID-003	1	Plutonium Finishing Plant
HNF-SD-MP-SRID-007	1	Waste Encapsulation and Storage Facility
HNF-SD-SNF-RID-001	3	Spent Nuclear Fuel Project

HNF-SD-MP-SRID-006	1	Fast Flux Test Facility
HNF-SD-MP-SRID-008	1	324/327 Building
HNF-SD-MP-SRID-011	1	Waste Management Hanford

RL TAILORED CONTRACTOR REQUIREMENTS DOCUMENTS

DOC. NUMBER		TITLE
CRD 110.3		Conference Management (5/8/00)
HFID 232.1B		Notification, Reporting and Processing of Operations Information
RLID 420.1		Fire Protection
CRD 440.1		Firearms Safety
RLM 440.2		Aviation Manual
RLID 440.3		Regulatory Access Requirements and Implementing Directive
CRD 470.1		Safeguards and Security Program Requirements
RLID 470.2		Facility Approval and Registration of Activities
RLID 471.2B		Information Security Program
RLID 473.1		Protection of Safeguards and Security Interests
RLID 473.2		Hanford Site Access Eligibility
RLID 1210.1		Hanford Visitor Policies and Procedures
RLID 1300.1D		Facility Representative Program
RLID 5480.19		Conduct of Operations Requirements for RL
RLID 5630.3A		Protection of Hanford Facilities against Radiological and Toxicological Sabotage
RLID 5632.1B		Asset Protection Requirements
RLID 5633.3		Control and Accountability of Nuclear Materials at RL
RLID 5635.3		Hand-Carrying Classified Documents within the Hanford Site
RLID 5670.3A		Counterintelligence Program
DOE/RL-91-31	4	Hanford Site Waste Minimization and Pollution Awareness Program Plan
DOE/RL-92-19		Radiological Assistance Program Plan - Region 8
DOE/RL-94-02		Hanford Emergency Management Plan
DOE/RL-92-36		Hanford Site Hoisting and Rigging Manual
DOE/RL 94-125		Federal Building Self Protection Plan
DOE-RL-SOD-INST L&T.001	2	Hanford Site Lockout/Tagout Program
DOE/RL-94-97		Selection of Analytical Methods for Mixed Waste Analysis at Hanford
DOE/RL-94-55		Hanford Analytical Services QA Plan

DOE/RL-96-68	2	Hanford Analytical Services Quality Assurance Requirements Document
DOE-0223		RL Emergency Implementing Procedures
DOE-0225		Hanford Emergency Assessment Resource Manual (HEARM)

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

**SECTION 1
 GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: **FHI-M1**
 Performance Incentive Short Title: **SNF K-Basin Deactivation**
 Revision Number & Date: **Rev 0, 12/14/00**
 Maximum Available Incentive Fee: **24.8% of fee available in contract clause B.4**
 Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the Future

**SECTION 3
 PERFORMANCE OBJECTIVE(S), MEASURES AND EXPECTATIONS(S)**

List associated performance objectives, measures, and performance expectations. Identify associated PBS # for each performance objective and/or measures as appropriate.

Performance Objective: Move Fuel Away from the River PBS RS03 (WM01)

Measure 1: Transfer K-Basin Facility to River Corridor Contractor

Base: Remove spent fuel by 07/31/04, sludge by 08/31/04, canisters and racks from the basins by 01/31/05, and water from the basins by 08/31/06.

Stretch: Complete water removal by 04/30/05, and transfer to River Corridor contractor by 09/30/06.

Superstretch: Complete all fuel, sludge, water, and debris removal and transfer the K-Basins to the River Corridor contractor by 9/30/05.

Base:

***Expectation 1:** Complete removal of spent fuel from K-Basins by 07/31/04. (*M-34-18A & *M-34-18-B)

Expectation 2: Consolidate site wide non-production reactor fuel in 200 Area dry storage by 02/28/05.

***Expectation 3:** Complete removal or capture of sludge from K-Basins. Removed sludge shall be placed into T-Plant by 08/31/04. (*M-34-10)

***Expectation 4:** Complete water removal from the K-Basins and transfer it to the 200 Area Liquid Effluent Retention Facility (LERF) by 08/31/06. (*M-34-24)

Expectation 5: Remove racks and canisters from K-Basins by 01/31/05. (M-34-09-T01)

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

ORIGINAL

Expectation 6: Complete Transition Activities for CVD and other Facilities by 9/30/06.

Stretch:

Expectation 7: Complete fuel, sludge, water, and debris removal and transfer K-Basins to the River Corridor Contractor by 09/30/06, per the SNF Transition Functions and Requirements document SNF-4961

Expectation 8: Accelerate Expectation No.4 - Complete water removal from K-Basins by 04/30/06.

Superstretch:

Expectation 9: Accelerate Expectation No. 7 - Complete fuel, sludge, water, and debris removal and transfer the K-Basins to the River Corridor contractor by 9/30/05.

**SECTION 4
FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

Base = 75% of the fee available for this Performance Incentive
Stretch = 25% of the fee available for this Performance Incentive

Measure 1: Transfer K-Basin Facility to River Corridor Contractor PBS RS03 (WM01)

Expectation 1: Complete removal of spent fuel from K-Basins by 7/31/04.

Base:

- 4% of the fee allocated to this Performance Incentive shall be earned as progress payment if the first MCO of SNF is moved from KW Basin and transported to the CVDF for processing by 12/07/2000 (TPA M34-16)
- Up to 30.5% of the fee allocated to this Performance Incentive shall be earned as progress payment in increments of 25 MTHM as follows:
 - Increments 1 through: 8 - 2.2% each.
 - Increments 9 through: 61 - 0.2% each
 - All remaining increments - 0.1% each
- 5.5% of the fee allocated to this Performance Incentive shall be earned as progress payment upon removal of SNF from K-Basins by 07/31/04 (linearly decreasing per day to 0% on 10/30/04).
- 1.5% fee allocated to this Performance Incentive shall be earned as progress payment upon final shipment of MCO's received at the CSB by 8/30/04 (linearly decreased per day to 0% on 12/31/04)

Expectation 2: Consolidate site wide non-production reactor fuel in 200 Area dry storage by 02/28/05.

Base:

- 4% of the fee allocated to this Performance Incentive shall be earned as progress payments in increments for each MTHM of site wide non-production reactor spent nuclear fuel (excludes Shippingport fuel) placed into storage at the 200 Area ISA as follows:
- Increments 1 through: 13 - 2% each
 - 1.4% of the fee allocated to this Performance Incentive will be earned as a progress payment upon consolidation of remaining site wide non-production reactor fuel in 200 Area dry storage by 02/28/2005 (linearly decreasing per day to 0% on 05/31/05)

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

ORIGINAL

Expectation 3: Complete removal or capture of sludge from K-Basins. Removed sludge shall be placed into T-Plant by 08/31/04.

Base:

- 15.75% of the fee allocated to this Performance Incentive shall be earned as progress payments in increments of cubic meters of sludge as follows;
 - increments 1 through 45 cubic meters of sludge - 0.35% each
- 1.75% of the fee allocated to this Performance Incentive shall be earned as progress payments upon removal or containment of sludge by 08/31/04 (linearly decreasing to 0% on 12/31/04).

Expectation 4: Complete all water removal from K-Basins and transfer it to the 200 Area Liquid Effluent Retention Facility (LERF) by 8/31/06.

Base:

- Up to 4% of the fee allocated to this Performance Incentive shall be earned as progress payments at the rate of 0.02% per 10,000-gallon increments of basin water transferred to the 200 Area Liquid Effluent Retention Facility (LERF).
- 2% of the fee allocated to this Performance Incentive shall be earned as a progress payment upon completion of water removal from K-Basins and transfer to the 200 Area LERF by 8/31/06 (linearly decreasing per day to 0% on 9/30/06)

Expectation 5: Remove racks and canisters from K-Basins by 01/31/05

Base:

- 3.7 % of the fee allocated to this Performance Incentive shall be earned as progress payments in increments of 200 canisters as follows:
 - Increments 1 through 37 = 0.1%
- 0.3% of the fee allocated to this Performance Incentive shall be earned as progress payment upon completion of rack and canister removal from K-Basins by 01/31/05 (linearly decreasing to 0% on 04/30/05)

Expectation 6: Complete Transition Activities for CVD and other Facilities by 9/30/06
2.0% of fee allocated to this Performance Incentive shall be earned as progress payments for each facility, in increments as follows:

- 1.1% for completion of transition activities for CVD
- 0.1% each for completion of transition activities for 1706KE, 1706KEL, 1706KER, 1713KE, 1713KW, 1714KE, 1714KW, 1717K, and 1724K.

Expectation 7: Complete fuel, sludge, water and debris removal and transfer K-Basins to the River Corridor Contractor by 09/30/06 per the SNF Transfer Functions and Requirements document SNF-4961.

Stretch:

15% of the fee allocated to this Performance Incentive shall be earned as a progress payment upon removal of fuel, sludge, debris, and water from K-Basins and transfer of K-Basins to the River Corridor Contractor by 09/30/06.

Expectation 8: Accelerate Expectation No. 4 -Complete water removal from K-Basins by 04/30/06.

Stretch:

10% of the fee allocated to this Performance Incentive shall be earned as a progress payment upon completion of removal of K-Basin water by 04/30/06 (linearly decreasing per day to 0% on 08/31/05).

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

ORIGINAL

Expectation 9:

Superstretch: Accelerate Expectation No. 7 - Complete fuel, sludge, water, and debris removal and transfer the K-Basins to the River Corridor contractor by 9/30/05.

\$6.0M in super stretch fee is available per this expectation and will be earned as a progress payment based on the acceleration of the transfer of the K-Basins to the River Corridor contractor from the stretch date of 9/30/06 to 9/30/05. The maximum \$6.0M fee will be earned on 9/30/05 decreasing linearly per day to \$0 on 9/30/06.

TPA/DNFSB STANDARD PENALTY STATEMENT: A provisional penalty of up to \$10K/week may be imposed for any missed TPA or DNFSB milestone that is considered interim to a final incentivized milestone designated with an asterisk (*). Provisional penalties may be waived by the Contracting Officer if the final (*) milestone is met and the Contracting Officer determines that no adverse impacts, fines, or penalties will result from the missed interim milestone.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure

NONE

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $[(BCWP-ACWP)/BCWP] \times 100$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of each performance expectation, at the Project Baseline Summary level for PBS identified in Section 4, Fee Schedule.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).

Status will be discussed during monthly project reviews by the responsible RL performance monitor facilitating a synergistic FHI/DOE relationship for deciding appropriate corrective action should conditions warrant.

Measure 1: Transfer K-Basin Facility to River Corridor Contractor

Base:

Expectation 1:

Complete removal of spent fuel from K-Basins.

When K-Basins fuel has been removed from KE and KW Basins this expectation will be considered complete

Initiate and complete removal of K East Basin SNF M-34-17 and M-34-18B: M-34-17- The K East Basin spent nuclear fuel retrieval system shall begin retrieving, cleaning, packaging and removing spent nuclear fuel for transport to the CVDI. M-34-18B This interim milestone will be complete when spent nuclear fuel has been removed. It is understood that additional fuel fragments may be discovered during the removal of sludge; however, this will not adversely impact the agreed-upon definition of completion of this expectation.

M-34-12- Complete construction of K East Basin integrated water treatment system to support spent nuclear fuel removal. The K East Basin integrated water treatment system shall be constructed, installed, and acceptance test(s) completed.

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

ORIGINAL

M-34-13B-T01—Complete construction and installation of K East Basin Spent Nuclear Fuel Retrieval System. The K East Basin spent nuclear fuel retrieval system shall be constructed, installed, and acceptance test(s) completed.

M-34-143-T01— Complete K East Cask Facility Modifications. The K East Cask Facility Modifications shall be constructed, installed, and acceptance test(s) completed.

Complete Removal of K West Basin SNF M-34-18A: This interim milestone will be complete when spent nuclear fuel has been removed. It is understood that additional fuel fragments may be discovered during the removal of sludge; however, this will not adversely impact the agreed upon definition of completion of this expectation.

Expectation 2: Consolidate site wide non-production reactor fuel in 200 Area dry storage.

Complete Site-wide SNF Consolidation: Transfer, transport and management of non-K Basin Hanford SNF from custodian facilities as identified in formal agreements with current fuel custodians. FFTF fuel and TRIGA fuel in dry storage casks in the 400 Area ISA and LWR fuel assemblies in the 324 Building will be transferred to the 200 Area ISA. Site-wide SNF consolidation is considered complete when the FFTF, LWR SNF, and NRF TRIGA fuel transfer to the 200 Area ISA have been completed. It is acknowledged that Shippingport fuel is non-production reactor fuel. However, it is excluded from this expectation because movement of Shippingport fuel to the CSB is incentivized in FHI-M7, expectation 4.

Expectation 3: Complete removal or capture of sludge from K-Basins. Removed sludge shall be placed into T-Plant.

Initiate and Complete K Basin Sludge Removal M-34-08 and M-34-10: Sludge from the K Basins floors and pits, will be collected, pumped to a loadout system and transport containers, trucked to 200 W Area for off-loading and interim storage at the T-Plant Facility. The characteristics of K Basin sludge shall meet the waste acceptance criteria for T-Plant. Prior to initiation of sludge removal, the following systems and equipment shall be designed, acquired, fabricated, installed, tested and proven operable:

- Floor sludge retrieval system
- Sludge loadout system
- Sludge handling and transport system
- T-Plant off loading equipment

It is understood that sludge captured in knock out pots and settler tanks will not have to be placed into T-Plant to meet this performance expectation.

Expectation 4: Complete water removal from K-Basins and transfer it to the LERF for treatment.

When the water (~ 1,000,000 gallons per basin) has been removed from KE and KW basins and transferred to the 200 Area LERF, this expectation will be considered complete.

Complete KW and KE Basin Water Removal--M-34-22 and M-34-24, M-34-19—Initiate removal, replacement, and treatment of contaminated K Basins water where tritium concentrations exceed 300,000 pCi/L. **M-34-20**—Complete removal, replacement, and treatment of contaminated K Basins water such that the tritium concentration in the basin is decreased and is maintained at or below 200,000 pCi/L. Removing all water could satisfy this milestone. **M-34-21**—Initiate full scale K West water removal. **M-34-23**—Initiate full scale K East Basin water removal. Water from K Basins or CVD, after treatment through existing ion-exchangers, shall be pumped to tanker trucks for shipment to the 200 Area LERF. The water from K Basins or CVD shall meet the acceptance criteria for LERF.

Expectation 5: Remove racks and canisters from K-Basins.

Complete K Basins rack and canister removal—M-34-06-T01 and M-34-09-T01: M-34-06-T01—Initiate K West spent nuclear fuel canister cleaning operations. Canister cleaning operations consist of removal of the contents

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation ORIGINAL

from each canister and processing of the canisters through the radioactive decontamination apparatus. Racks and canisters from K Basins shall be retrieved, volume reduced [as necessary], pressure-washed, packaged in burial boxes, and transported to near 200 W Area for disposal at the Environmental Restoration Disposal Facility (ERDF). Most of the racks and canisters will meet the waste acceptance criteria for ERDF; alternatively, certain racks and canisters may have to be disposed at the Solid Waste Disposal Facility. Prior to rack and canister removal campaign, the following systems and equipment shall be designed, acquired, fabricated, installed, tested and proven operable:

- Retrieval equipment
- Pressure-washing equipment/station
- Lifting apparatus

Expectation 6: Complete Transition Activities for CVD and Ancillary Facilities.

- Complete transition activities for CVD, 1706KE, 1706KE1, 1706KER, 1713KE, 1713KW, 1714KE, 1714KW, 1717K, 1724K.

Stabilization of systems and equipment include: draining, de-energizing, material removal (hazardous, asbestos, characterization, radiological source reduction, downgrading, etc.). Systems and equipment include tanks, vessels, drums, elevators, crane, water systems, electrical systems, fire protection systems.

Stabilization of facilities includes deactivation of structural components and physical structures as required to minimize environmental, public and personnel hazards. Activities include characterization, radiological source reduction of walls and floors, access regulation, effluent isolation, rodent control, final surveys, and repairs.

Stretch:

Expectation 7: Complete fuel, sludge, water and debris removal and transfer K-Basins to the River Corridor Contractor.

Complete 100 Area Deactivation—Other ancillary facilities in the 100K Area shall be deactivated to meet final end point criteria. Other activities required will be as delineated in the final facility End-Point Criteria document.

- Transfer of K Basins to the River Corridor contractor include stabilization of systems and equipment and stabilization of facilities.

Stabilization of systems and equipment include: draining, de-energizing, material removal (hazardous, asbestos, characterization, radiological source reduction, downgrading, etc.). Systems and equipment include tanks, vessels, drums, elevators, crane, water systems, electrical systems, fire protection systems

Stabilization of facilities includes deactivation of structural components and physical structures as required to minimize environmental, public and personnel hazards. Activities include characterization, radiological source reduction of walls and floors, access regulation, effluent isolation, rodent control, final surveys, and repairs.

Expectation 8: Complete water removal from K-Basins.

When all of the water (~ 1,000,000 gallons per basin) has been removed from KE and KW basins and transferred to the 200 Area LERF for treatment, this expectation will be considered complete.

Complete KW and KE Basin Water Removal—M-34-22 and M-34-24. M-34-19—Initiate removal, replacement, and treatment of contaminated K Basins water where tritium concentrations exceed 300,000 pCi/L. M-34-20—Complete removal, replacement, and treatment of contaminated K Basins water such that the tritium concentration in the basin is decreased and is maintained at or below 300,000 pCi/L. Removing all water could satisfy this milestone. M-34-21—Initiate full scale K West water removal. M-34-23—Initiate full scale K East Basin water removal. Water from K Basins or CVD, after treatment through existing ion-exchangers, shall be pumped to tanker trucks for shipment to the 200 F Area LERF. The water from K Basins or CVD shall meet the acceptance criteria for the LERF.

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation

ORIGINAL

Superstretch:

Expectation 9: Transfer K-Basins to the River Corridor Contractor.
Complete CVDF Deactivation – The CVD Facility and other ancillary facilities in the 100K Area shall be decontaminated to allow ERC access during long-term Surveillance & Maintenance. All ancillary facilities will be deactivated to meet final end point criteria. Other activities required will be as delineated in the final facility End-Point Criteria document.

DEFINITIONS: (define terms)

CVDF	Cold Vacuum Drying Facility
DOE	Department of Energy
EFT	Effluent Fluid Treatment
ERC	Environmental Restoration Contractor
ERDF	Environmental Restoration Disposal Facility
FFTF	Fast Flux Test Facility
FHI	Fluor Hanford, Inc.
ISA	Interim Storage Area
KE	K East
KW	K West
LERF	Liquid Effluent Retention Facility
PCFL	Pico Curies per Liter
LWR	Light Water Reactor
PWR	Pressurized Water Reactor
RI	Richland Operations Office
SNF	Spent Nuclear Fuel
TPA	Tri-Party Agreement

Non-Production Reactor Fuel- Spent fuel that comes from a reactor other than the nine production reactors at Hanford

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

Documents to be submitted include, but are not limited to the following:

- Copy of a summary MCO Traveler documentation demonstrating that MCOs have been transported from the K-Basins.
- Letters from the contractor to DOE-RL certifying completion of TPA milestones.
- Acceptance documentation with current Hanford SNF custodians via 741 Form- Nuclear Material Transactions
- Letters from the contractor to DOE-RL certifying completion of Site-wide SNF Consolidation activities.
- Letters from the contractor to DOE-RI certifying completion of K-Basin and CVDF Deactivation activities

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiations).*

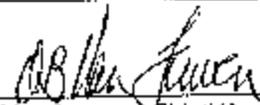
Completion of Expectation #2 is predicated on a pending DOE decision that would deactivate FFTF and that DOE would provide resources necessary to complete fuel offloading from FFTF into Interim Storage Casks by December 31, 2004. If this assumption is not valid, Expectation #2 should be considered 100% satisfied when all 324 Building LWR SNF, NRF TRIGA SNF, and all FFTF SNF in storage at the 400 Area ISA by December 31, 2004 have been consolidated at the CSB or 200 Area ISA. The scope of this expectation assumes that DOE Headquarters will establish an off site disposition path for sodium bonded FFTF fuel. This fuel is outside the scope of this expectation.

FY 2001-2006 PERFORMANCE INCENTIVE: K-Basins Deactivation ORIGINAL

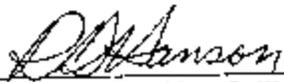
Sludge volume is based on nominal sludge volume of 50 cubic meters, which is made up of 47 cubic meters of floor & pit sludge and 3 cubic meters of fuel wash sludge. Sludge volumes associated with Expectation #3 may need to be renegotiated based on actual sludge quantities encountered during fuel movement and cleanup operations. Sludge will be measured by volume in shipping cask. It is expected that each shipment will include ~50% sludge, 40% water and 10% air by volume. In the event that the total sludge volume requires renegotiation the available fee and end dates will remain unchanged.

100 Area end point criteria have not been established or approved. Final end point criteria shall be consistent with the SNF baseline.

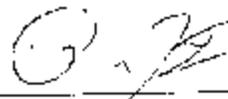
SECTION 6
SIGNATURES


D.B. Van Leuven, Chief Operating Officer
Fluor Hanford, Inc.

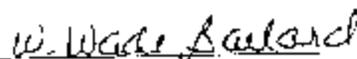
12/20/00
Date


R. D. Hanson, President & CEO
Fluor Hanford, Inc.

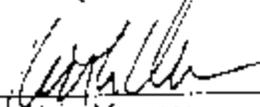
12/20/00
Date


F. G. Loscoe, Director
Office of Spent Nuclear Fuels

12/20/00
Date


W. W. Ballard, Assistant Manager
For Planning and Integration

12/20/00
Date


K. A. Klein, Manager
Richland Operations Office

12/20/00
Date

FY 2001-06 PERFORMANCE INCENTIVE: Pu Stabilization/PFP Deactivation

ORIGIN

**SECTION 1
 GENERAL INFORMATION**

Performance Incentive Number: FHI-M2
 Performance Incentive Short Title: Pu Stabilization/PFP Deactivation
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: 18.8% of the fee available in Contract Clause B.4.
 Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the Future

**SECTION 3
 PERFORMANCE OBJECTIVE(S), MEASURES AND EXPECTATION(S)**

List associated performance objectives, measures, and performance expectations. Identify associated PBS # for each performance objective and/or measures as appropriate.

Performance Objective: Disposition Pu, & U PBS CP03 (TP-05)

Measure 1: Pu metal/oxides/other types dispositioned

Expectation 1: All Plutonium bearing materials stabilization and packaging will be completed in accordance with DNFSB Milestones identified in the current DOE Implementation Plan for the DNFSB Recommendation 94-1/2000-1

<u>Base</u>	<u>Stretch</u>
By 05/31/04 (* Final DNFSB 2000-1 due date)	By 11/30/03

Measure 2: PFP Deactivation

Expectation 1: Reduce the PFP Protected Area to 2736-Z/ZB and yard storage.

Base: Complete 75% of legacy Pu holdup removal and disposition by 09/30/06

Stretch: Complete 100% of legacy Pu holdup removal and D&D 232Z and PPSL Annex to slab on grade and transfer all SNM required to reduce the Protected Area (PA) to 2736-Z/ZB or other RL approved location by 9/30/06.

Super Stretch: Complete 236-7 (PRF) Safe Shutdown

FY 2001-06 PERFORMANCE INCENTIVE: Pu Stabilization/PFP Deactivation ORIGINAL

SECTION 4
FEE SCHEDULE

Identify fee schedule by performance objective and/or measure(s)

Base = (69%) of the fee available for this Performance Incentive
Stretch = (31%) of the fee available for this Performance Incentive

Measure 1: Pu metal/oxides/other types dispositioned PBS CP03 (TP05)
Expectation 1: Stabilize Pu

Base: 47% of available fee for this Performance Incentive shall be earned as progress payment as follows:

- Stabilize Pu metal/oxide/polycubes - 10% of fee available for this PI can be earned payable in 15 item increments for the balance of the inventory (-5731)
- Stabilize Pu solutions - 10% of fee available for this PI can be earned for 4260 liters payable in 40 liter increments
- Stabilize Residues - 10% of fee available for this PI can be earned for 3380 bulk kg payable in 30 kg increments
- 6% of available fee for this Performance Incentive can be earned as provisional payment upon hot startup of the 2736-ZD Stabilization and Packaging System on or before 09/30/01. Provisional payment is forfeited if all Pu stabilization and packaging is not completed by 05/31/04.
- 5% upon completion of all Pu stabilization and packaging by 5/31/04 (linearly decreasing per day to 0% on 8/31/04).
- 3% upon completion of Pu metal stabilization and packaging, as a provisional payment. Provisional payment is forfeited if all Pu stabilization and packaging is not completed by 05/31/04.
- 3% upon completion of Pu solutions stabilization and packaging, as a provisional payment. Provisional payment is forfeited if all Pu stabilization and packaging is not completed by 05/31/04.

Stretch: 16% upon completion of all Pu Stabilization and packaging by 11/30/03 (linearly decreasing per day to 0% on 05/31/04).

Measure 2: PFP Deactivation PBS CP03 (TP05)

Expectation 1: Reduce the PFP Protected Area to 2736-Z/ZB and yard storage

Base: Complete 75% of legacy Pu holdup removal and disposition by 09/30/06.
22% of available fee for this Performance Incentive shall be earned as progress payment as follows:

- 1% of fee available for this PI can be earned per 5% of Pu Holdup removed and dispositioned, up to 15% fee (75% holdup)
- 7% of fee available for this PI can be earned if 75% of Pu Holdup dispositioned by 09/30/06

Stretch: Complete 100% of legacy Pu Holdup removal and disposition to reduce Protected Area to 2736-Z/ZB, D&D 232Z and PPSL Annex to slab-on-grade.

21% of available fee for this PI shall be earned as progress payment as follows:

- 7% of fee available for this PI can be earned for removal and disposition of remaining 25% of Pu Holdup.
- 2% of fee available for this PI can be earned if all SNM required to reduce the Protected Area (PA) is transferred to 2736-Z/ZB (or RL approved location).

FY 2001-06 PERFORMANCE INCENTIVE: Pu Stabilization/PFP Deactivation

ORIGINAL

- 5% of fee available for this PI can be earned for 232-Z and PPSL Annex demolished to slab-on-grade by 9/30/06
- 7% of fee available for this PI can be earned if the Protected Area is reduced to 2736-Z/ZB and yard storage.

Super Stretch: Complete 236-Z (PRF) Safe Shutdown.

TPA/DNFSB STANDARD PENALTY STATEMENT: A provisional penalty of up to \$10K/week may be imposed for any missed TPA or DNFSB milestone that is considered interim to a final incentivized milestone designated with an asterisk (*). Provisional penalties may be waived by the Contracting Officer if the final (*) contractual milestone is met and/or the Contracting Officer determines that no fines, penalties, or significant adverse impacts, will result from the missed interim milestone.

For purposes of this PI it is assumed that the milestone date for DNFSB milestone, "Complete brushing and repackaging of metal inventory, 3/31/01" will be changed as follows: Metal in inner BTS containers by 3/31/01, Corrosion products will be in inner BTS cans by 4/30/01 and all material in outer 3013 containers by 8/01/01.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: *Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure*

NONE

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $(((BCWP-ACWP)/BCWP) \times 100)$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level identified in Section 4, Fee Schedule.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).*

Measure 1:

The plutonium materials stabilization is considered complete when they have met the DOE-STD-3013 standard and are packaged and placed into vault storage.

Plutonium residues are considered stabilized when they are treated (if required) and placed in a drum/pipe, and meet the Hanford Site Waste Acceptance Criteria which incorporates the current WIPP Waste Acceptance Criteria (WAC) requirements. Residues shall be packaged as appropriate to meet Hanford Site Solid Waste Acceptance Criteria (HNF-0062) and WIPP WAC requirements.

Pu materials are also considered stabilized when they have been sent to another site for treatment or disposition. Plutonium materials (Pu, Pu - U) removed from the Hanford DNFSB 94-1/2000-1 inventories through other DOE approved means (e.g., sent to the Hanford Tank Farms) shall also be considered stabilized.

Completion of the DNFSB milestone is considered met when all material of a category identified in the DOF Implementation Plan for Recommendation from 94-1/2000-1 has been stabilized and/or dispositioned in accordance with the DNFSB 2000-1 Implementation Plan

FY 2001-06 PERFORMANCE INCENTIVE: Pu Stabilization/PPF Deactivation

ORIGINAL

Measure 2:

Pu holdup disposition is considered complete when material has been removed, treated (if required) and packaged to meet Hanford Site Waste Acceptance Criteria which incorporates the current WIPP Waste Acceptance Criteria (WAC) requirements, packaged to DOE-STD-3013 Standard requirements and stored in the vaults, or removed from the Material Control Accountability (MC&A) records.

Ductwork, filter box, and glovebox disposition in 232-Z is considered complete when equipment has been cleaned, disassembled (if required) and packaged to meet Hanford Site Waste Acceptance Criteria. Size reduction and/or decontamination technologies shall be used to minimize waste volumes.

Super Stretch: Placeholder for 236-Z (PRF) Safe Shutdown activities related to facility deactivation and dismantlement.

DEFINITIONS: *(define terms)*

- Vault Storage - DOE-STD-3013 compliant container placed into one of the following vaults for storage, 2736-ZB, 2736Z or an RL approved alternate storage.
- Holdup Material - Any plutonium-bearing residue remaining in pipe systems, gloveboxes, tanks, etc as identified in the Material, Control and Accountability records.
- Protected Area - That area so designated by DOE Orders which requires special access requirements, controls, safeguards and security.
- SNM - Special Nuclear Material required to reduce the Protected Area (PA).

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above)*

Measure 1:

Records shall be available that can be used to verify the Pu material stabilization and disposition.

Measure 2:

If material/waste is removed to safely deactivate the system, provide full, traceable disposal documentation (e.g. RCRA requirements, waste profile sheet, waste packaging procedure used, waste storage location outside the PPF complex, vault storage location, etc.).

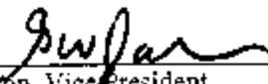
ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiations,*

The BCWS associated with the Holdup removal and disposition, reducing protected area to 2736-Z/ZB, and D&D 232Z and PPSL Annex to slab on grade is equivalent to or greater than the BCWS in the baseline as modified by the Schedule Option Study for the Contract Period. This will be reevaluated when the Baseline Change Request to implement the Schedule Option Study is approved.

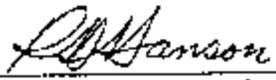
FY 2001-06 PERFORMANCE INCENTIVE: Pu Stabilization/PFP Deactivation

SECTION 6
SIGNATURES

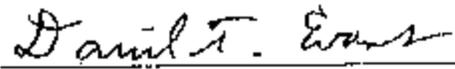
ORIGINAL


G. W. Jackson, Vice President
Nuclear Material Stabilization

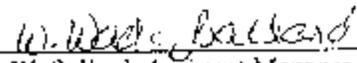
12/20/00
Date


R. D. Hanson, President & CEO
Fluor Hanford, Inc.

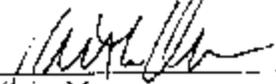
12/20/00
Date


P. M. Knocheneyer, Assistant Manager
For Nuclear Materials & Facility Stabilization

12/20/00
Date


W. W. Ballard, Assistant Manager
For Planning and Integration

12/20/00
Date


K. A. Klein, Manager
Richland Operations Office

12/20/00
Date

**FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE:
 200 Area Facility Disposition**

**SECTION 1
 GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: FHI-M3
 Performance Incentive Title: 200 Area Facility Disposition
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: 3% of the fee available in Contract Clause B.4.
 Performance Incentive Type: Base Stretch Superstretch
 (Check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE(S) MEASURE(S) & EXPECTATION(S)**

List associated performance objectives, measures, and performance expectation. Identify associated PBS# for each performance objective and/or measures as appropriate

Performance Objective: Disposition Surplus Buildings and Rolling Stock
 PBS # CP01, SS02 (TP01, TP03, TP13)

Performance Measure: Disposition Surplus Buildings and Rolling Stock

Performance Expectations:	Base	Stretch	Superstretch
1. Decontaminate & Decommission the 233-S and 233-SA Facilities	9/30/2004	6/30/2004	
2. Complete installation of new roofs on PUREX and B Plant	9/30/2002		
3. Disposition contaminated railcars	6/30/2006	8/31/2005	9/30/2003

**SECTION 4
 FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

Base = 60% Stretch = 40%

Measure 1:

Expectation 1: Decontaminate and Decommission (D&D) 233-S and 233-SA facilities
 PBS CP01

Base:

- 18% of the fee allocated to this Performance Incentive shall be earned provisionally as follows:
 - 1.8% for each 10% of completed D&D on 233-S and 233-SA facilities. Percent D&D completion shall be determined by earned value. Provisional fee converts to progress fee upon completion of D&D of 233-S and 233-SA. In the event the Contractor fails to complete D&D of 233-S and 233-SA, the provisional fee paid shall be forfeited.
- Up to 20% of the fee allocated to this Performance Incentive shall be earned as progress payment upon completion of Decontamination and Decommissioning (D&D) of 233-S and 233-SA facilities by 9/30/04 as follows

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE:

200 Area Facility Disposition

ORIGINAL

- Complete D&D by 09/30/04 - 20%
- Complete D&D after 09/30/04, but NLT 10/30/04 - 16%
- Complete D&D after 10/30/04, but NLT 11/30/04 - 12%
- Complete D&D after 11/30/04, but NLT 12/30/04 - 8%
- Complete D&D after 12/30/04, but NLT 01/31/05 - 4%
- Complete D&D after 01/31/05 - 0%

Stretch: 17% of the fee allocated to this Performance Incentive shall be earned as progress payment as follows:

- Complete D&D by 06/30/04 - 17%
- Complete D&D after 06/30/04, but NLT 07/31/04 - 13%
- Complete D&D after 07/31/04, but NLT 08/31/04 - 9%
- Complete D&D after 08/31/04, but NLT 09/29/04 - 5%
- Complete D&D after 9/29/04 - 0%

Expectation 2: Complete installation of new roofs on PUREX and B-Plant by 9/30/02 PBS CP01 (TP01, TP03)

Base: 10% of the fee allocated to this Performance Incentive shall be earned as progress payments as follows:

- Complete installation of roofs by 09/30/02 - 10%
- Complete installation of roofs after 09/30/02, but NLT 10/31/02 - 6.5%
- Complete installation of roofs after 10/31/02, but NLT 11/30/02 - 3.0%
- Complete installation of roofs after 11/30/02 - 0%

Expectation 3: Disposition of contaminated railcars

PBS SS02 (TP15)

Base: 12% of the fee allocated to this Performance Incentive shall be earned as progress payment as follows:

- 0.33% per Landlord Equipment Disposition Project (LEDP) contaminated railcar dispositioned (~21 railcars = 7% max. fee possible)
- 5% upon disposition of all LEDP contaminated railcars as specified in Section 5 "Base" as follows:
 - All LEDP contaminated railcars dispositioned by 6/30/06 - 5%
 - All LEDP contaminated railcars dispositioned after 6/30/06, but NLT 7/31/06 - 3.5%
 - All LEDP contaminated railcars dispositioned after 7/31/06, but NLT 08/31/06 - 2%
 - All LEDP contaminated railcars dispositioned after 08/31/06 - 0%

Stretch: 13% of the fee allocated to this Performance Incentive shall be earned for disposition of the contaminated railcars as defined in Section 5 "Stretch" as progress payment as follows:

- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), by 08/31/05 - 23%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 08/31/05, but NLT 09/30/05 - 21%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 09/30/05, but NLT 10/31/05 - 19%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 10/31/05, but NLT 11/30/05 - 17%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 11/30/05, but NLT 12/31/05 - 15%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 12/31/05, but NLT 01/31/06 - 13%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 01/31/06, but NLT 02/28/06 - 11%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 02/28/06, but NLT 03/31/06 - 9%

**FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE:
200 Area Facility Disposition**

ORIGINAL

- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 03/31/06, but NLT 04/30/06 - 7%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 04/30/06, but NLT 05/31/06 - 5%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 05/31/06, but NLT 06/29/06 - 3%
- Disposition of all contaminated railcars not located in the PUREX Tunnels, as of 10/01/00 (~12), after 06/29/06 - 0%

Superstretch: \$0.52M of superstretch fee will be earned as progress payment for disposition of the additional contaminated railcars and contaminated heavy equipment listed below by 9/30/2003:

- 2 Railcars located at T-Plant
- 1 Condenser loaded on T-Plant Railcar
- 1 Drag-off burial box located on T-Plant Railcar
- 2 Railcars located in 183-K-W
- 2 Contaminated Ion Exchange Columns loaded on railcars in 183-K-W
- 5 Pieces of regulated heavy equipment currently included in the EDP

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: *Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this Performance Incentive. The requirements listed below are the gateway only requirements for this Performance Incentive.*

NONE

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $[(BCWP-ACWP)/BCWP] \times 100$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level identified in Section 4, Fee Schedule.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared.*

Expectation 1:

Base: The Contractor shall have completed decontamination and decommissioning of the 233 S and 233-SA facilities through concrete slab, facility footer and trench removal.

Stretch: The Contractor shall have completed decontamination and decommissioning of the 233-S and 233-SA facilities through concrete slab, facility footer and trench removal.

Expectation 2:

Base: The Contractor shall have completed installation of new roofs on PUREX and B Plant by 9/30/02.

**FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE:
200 Area Facility Disposition**

ORIGINAL

Expectation 3:

Base:

- The Contractor shall have completed contaminated railcar transfers from DOE-RL ownership as documented by the title transfer (declaration of excess and shipping documents) and/or completed Solid Waste Information and Tracking System (SWITS) document; and
- The contaminated railcars are physically moved from their current location to their final disposition location approved by the DOE-RL COR, either on or off the Hanford Site, that meets all applicable DOE Orders, and federal and state statutes.

Stretch:

- The Contractor shall have completed all contaminated railcar transfers from DOE-RL ownership as documented by the title transfer (declaration of excess and shipping documents) and/or completed Solid Waste Information and Tracking System (SWITS) document; and
- The contaminated railcars are physically moved from their current location to their final disposition location approved by the DOE-RL COR, either on or off the Hanford Site, that meets all applicable DOE Orders, and federal and state statutes.

Superstretch:

- The Contractor shall have completed all contaminated railcar transfers from DOE-RL ownership as documented by the title transfer (declaration of excess and shipping documents) and/or completed Solid Waste Information and Tracking System (SWITS) document; and
- The contaminated railcars are physically moved from their current location to their final disposition location approved by the DOE-RL COR, either on or off the Hanford Site, that meets all applicable DOE Orders, and federal and state statutes.

DEFINITIONS: *(Define terms)*

Transfer Document: An executed, DOE-RL approved, fixed duration arrangement. Approved contractual arrangements can include leases, licenses, permits, removal from the site, or other transfer mechanism as appropriate to the task.

ACRONYMS

BHI	Bechtel Hanford, Inc.
DOE-RL	Department of Energy, Richland Operations Office
ERC	Environmental Restoration Contractor
FH	Fluor Hanford (Inc.)
MOU	Memorandum of Understanding
NLT	Not Later Than
SWITS	Solid Waste Information Tracking System

Base

Listing of Landlord Equipment Dispositioning Project:

The following rail equipment assigned to the Equipment Dispositioning Project remains to be dispositioned as of 10/00. The list does not include the 2 BN flat cars to be decontaminated by TARC nor does it include the metal processing remaining on the well cars sent to GTS in FY99 and FY00. This list also does not include the rail Cars at T-Plant, the two Flat Cars in 183-KW that have ion exchange columns and other waste on them, nor the METS located at FFTF.

**FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE:
 200 Area Facility Disposition**

ORIGINAL

<u>RAIL CAR NUMBER</u>	<u>DESCRIPTION</u>	<u>STATUS</u>
10 A 19601 (PX-17)	Flat Car	212 R
PX-11	Flat Car	212 R
PX-12	Flat Car	212 R
10 B 03636	Well Car	212 R
10 B 03637	Well Car	212 R
10 B 03639	Well Car	212 R
10 B 03640	Well Car	212 R
10 B 03641	Well Car	212 R
10 B 03642	Well Car	212 R
10 B 03643	Well Car	212 R
10 B 03645	Well Car	212 R
10 B 05598	Well Car	212 R
10 B 05599	Well Car	212 R
10 B 19936	Tall Well Car	212 R
10 B 19937	Tall Well Car	212 R
10 B 19944	Tall Well Car	212 R
10 B 19945	Tall Well Car	212 R
10 H 03663	Double Shell Tank Car	212 R
10 H 03712	Tank Car	212 R
39 03729	Locomotive	212 R
39 03731	Locomotive	212 R

Stretch

Listing of PUREX Rail Cars:

The following rail equipment is located in the PUREX rail cut and is a comprehensive list of all the rail cars that constitute the Stretch portion.

<u>ID NUMBER</u>	<u>DESCRIPTION</u>	<u>LOCATION</u>
10 A 03650	Flat Car	PUREX
10 A 03651	Flat Car	PUREX
PX 32	Flat Car	PUREX
10 A 03426	Flat Car	PUREX
10 A 03602	Flat Car	PUREX
10 A 03621	Flat Car	PUREX
10 A 03634	Flat Car	PUREX
10 A 03663	Flat Car	PUREX
10 A 03669	Flat Car	PUREX
Little Toot	Electric Pusher	PUREX
10 A 19307	Flat Car	PUREX
10 A 03653	Flat Car	PUREX

COMPLETION DOCUMENTS LIST: (In addition to the Completion Notice, the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above.

Expectation 1: The Contractor shall submit a letter report to RL documenting that the 233-S and 233-SA facilities were decontaminated and decommissioned in accordance with the 233-S Authorization Basis Manual and the associated Removal Action Report.

RL-CO 472 Date 12/19/06

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: ORIGINAL
200 Area Facility Disposition

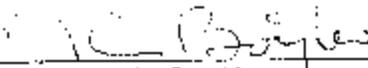
Expectation 2: The Contractor shall submit a letter report to RL documenting the installation of the new PUREX and B Plant roofs in accordance with the applicable requirements.

Expectation 3: The Contractor shall submit a letter report to RL documenting the contaminated railcar disposition with the corresponding transfer documents and/or SWITS documentation.

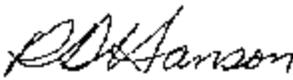
ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

1. The Expectation 1 Base and Stretch dates are based on the assumption that FY 2001 BHI Performance Incentive ERC-D&D-1 is completed in its entirety by contract transition on 6/30/2002, and any impact of the characterization of the legacy filters has been incorporated in the baseline.
2. For Expectation 2, an MOU should be in place between DOE-RL, BNL, and FBI by 2/15/02 to: a) allow procurements and work tasking to FH Standards, Requirements and Work Control procedures, and b) to provide access to the facility(ies) to perform work

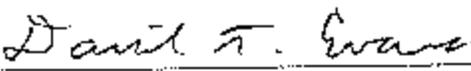
**SECTION 6
SIGNATURES**


N.C. Boyter, Vice President
River Corridor Project
Fluor Hanford, Inc.

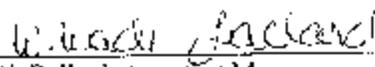
12/20/00
Date


R.D. Hanson, President and CEO
Fluor Hanford, Inc.

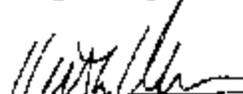
12/20/00
Date

FM

P.M. Knofmeyer, Assistant Manager
For Nuclear Materials and Facilities Transition

12/20/00
Date


W.W. Ballard, Assistant Manager
For Planning & Integration

12/20/00
Date


K.A. Klein, Manager
Richland Operations Office

12/20/00
Date

ORIGINAL**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Retrieve TRU Waste**

15% of the fee associated with this PI shall be earned as progress payment upon completion of the retrieval of 11,700 suspect TRU waste drums by 9/30/06.

Stretch:

Expectation 1: 15% of fee allocated to this PI, shall be earned as progress payment for an additional 3,500 suspect TRU waste drums retrieved, in increments of 25 drums.

15% of the fee associated with this PI shall be earned as progress payment upon completion the retrieval of an additional 3,500 (15,200 total) suspect TRU waste drums by 9/30/06.

Super Stretch:

Expectation 1: \$0.1M in fee for the designation of all remaining Retr. evably Stored Suspect TRU Waste (~19,000 containers) as TRU or Low-level Waste by 6/30/05.

Payment of the entire fee of this Performance Incentive is conditional on effective management of waste in CWC. If at any time, for reasons within the control of the contractor, additional buildings must be built in CWC for storage of retrieved suspect TRU waste or other waste streams displaced by the retrieved TRU waste, the Contractor shall forfeit the entire fee associated with the Performance Incentive.

SECTION 5**PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure:

Not Applicable

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive and
2. Not incur any unfavorable cost variance percentage $\{[(BCWP-ACWP)/BCWP] \times 100\}$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance measure, at the Project Baseline Summary level identified in Section 4, Fee Schedule.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).

Measure:**Base and Stretch:****Expectation 1:**

Retrieval is defined as removing the drums from the stack, making a designation as to TRU or Low-Level and permanently disposing of the drum in the LLBG (for drums designated as LLW) or placing the drum in storage in CWC or WRAP or transporting it to WIPP (for drums designated as TRU). Waste designation as to TRU or LLW must be performed either by assaying the drums or through a RL-approved alternate methodology.

Measure:**Super Stretch:****Expectation 1:**

Designation of all remaining suspect TRU waste drums and boxes/containers is defined as in-situ analysis and designation of the containers as TRU or LLW. The analysis is to be performed based on experience from previous retrieval operations and process knowledge of the waste drums and boxes/containers. The methodology utilized to make this designation is to be approved by RL and is to enable a designation to be made at a statistical confidence level of 95% or a RL-approved alternate confidence level.

FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Retrieve TRU Waste

ORIGINAL

DEFINITIONS: *(define terms)*

CWC – Central Waste Complex
LLW – Low-Level Waste
TRU – Transuranic Waste
WRAP – Waste Receiving and Processing Facility
WIPP – Waste Isolation Pilot Plant

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

Measure:

**Base and Stretch:
Expectation 1:**

Periodic: Upon submittal of a request for payment of fee, the Contractor shall submit a letter report to RL stating the number of drums retrieved and their designation during the performance period.

Annually: The contractor shall annually submit a letter report to RL by October 31, which documents the quantity of TRU waste retrieved during the previous fiscal year. The report shall include Package Identification Numbers (PIN's) for the retrieved drums, their designation, and their storage or disposal location.

Note: The Periodic submittal will be utilized for progress payment of fee. The Annual report will be utilized to fully validate Contractor performance per this Performance Incentive. Failure of a satisfactory validation may result in forfeiture of progress fee payment from the previous fiscal year.

Completion of any of the "balloon" deliverables as listed in Section 4 shall be documented in a letter report to RL. The report shall include Package Identification Numbers (PIN's) for the retrieved drums, their designation, and their storage or disposal location. Previous submittals may be referenced to avoid re-submission of information previously provided.

Completion of the designation of the remaining uncovered containers shall be documented by the submission of the designation analysis.

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance, which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

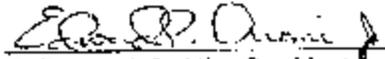
Low-Level and TRU waste that is evaluated as part of TRU Retrieval will not be considered newly generated waste. The Low-Level Waste will be relocated in the burial grounds without additional characterization activities and continue to be considered permanently disposed. TRU waste will not be characterized until processed through WIPP certification. If waste containers (TRU or Low-Level) require characterization (examination or chemical-screening) prior to disposal or WIPP certification, this PI may be renegotiated.

The baseline technology is assumed to be consistent with open-air TRU retrieval operations at other DOE facilities. This PI may be renegotiated if there are significant deviations from the baseline technology.

FY2001 -- 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Retrieve TRU Waste

SECTION 6
SIGNATURES

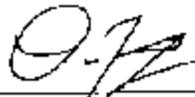
ORIGINAL


E. S. Aromi, Jr. Vice-President
Waste Management Project

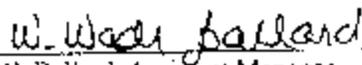
12/20/00
Date


R.D. Hansen, President and CEO
Fluor Hanford, Inc.

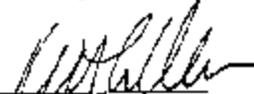
12/20/00
Date


H.E. Bilson, Assistant Manager
For Environmental Restoration and Waste Management

12/20/00
Date


W. W. Ballard, Assistant Manager
For Planning Integration

12/20/00
Date


K.A. Klein, Manager
Richland Operations Office

12/20/00
Date

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
 Treat and Dispose Mixed Low-Level Waste**

ORIGINAL

**SECTION 1
 GENERAL INFORMATION**

Performance Incentive Number: FHI-M5
 Performance Incentive Short Title: Treat and Dispose Mixed Low-Level Waste
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: 4.6% of fee available in Contract Clause B.4
 Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE (S), MEASURES AND EXPECTATION (S)**

*List associated performance objectives, measures, and performance expectations for FY 01 through FY 06.
 Identify associated PBS # for each performance objective and/or measures as appropriated.*

Performance Objective: Treat and dispose Mixed Low-Level Waste
 PBS CP02 (WM03, WM04, WM05 and TP-02)

Measure: Treat and/or dispose 11,430¹ cubic meters of Mixed Low-Level Waste

Base:

- Expectation 1: Treat and/or dispose 7,795 m³ of MLLW by 06/30/06
- *Expectation 2: Thermally treat 600 m³ of MLLW by 12/31/05 (TPA M-91-12).

Stretch:

- Expectation 1: Treat and/or dispose an additional 2,025 m³ of MLLW by 06/30/06

Super Stretch:

- Expectation 1: Treat and/or dispose an additional 1,610 m³ of MLLW by 06/30/06

¹ Pretreated volume

**SECTION 4
 FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

Base = 70%
 Stretch = 30%

Measure:

PBS CP02 (WM04)

Base:

- Expectation 1: 50% of the fee allocated to this PI shall be earned as progress payment for 7,795 m³ MLLW treated and/or disposed, in increments of 10 m³.

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Treat and Dispose Mixed Low-Level Waste**

ORIGINAL

15 % of the fee allocated to this PI shall be earned as progress payment upon completion of all 7795 m³ by 06/30/06. The fee shall be decreased linearly daily to 0% on 09/30/06.

***Expectation 2:** 5% of the fee allocated to this PI shall be earned as progress payment upon completion of the thermal treatment of 600 m³ MLLW by 12/31/05 (TPA M-91-12). This amount will decrease linearly daily to 0% on 2/28/06.

Stretch:

Expectation 1: 30% of the fee allocated to this PI shall be earned as progress payment for an additional 2,025 m³ MLLW treated and/or disposed, in increments of 10 m³.

Super Stretch:

Expectation 1: \$2.5M in fee for an additional 1,610 m³ of MLLW treated and/or disposed, earned in increments of 10 m³.

TPA/DNFSB STANDARD PENALTY STATEMENT: A provisional penalty of up to \$10K/week may be imposed for any missed TPA or DNFSB milestone that is considered interim to a final incentivized milestone designated with an asterisk (*). Provisional penalties may be waived by the Contracting Officer if the final (*) contractual milestone is met and/or the Contracting Officer determines that no fines, penalties, or significant adverse impacts, will result from the missed interim milestone.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure.

Not Applicable

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $[(BCWP-ACWP)/BCWP] \times 100$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level identified in Section 4, Fee Schedule.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).

Measure:

Expectation 1 (Base, Stretch, Super Stretch):

The contractor shall have treated the (pre-treatment) volume of MLLW as stated in Section 3 to a condition such that the waste is compliant for disposal and meets the RCRA Land Disposal Restrictions (LDR) or shall exit regulatory requirements (e.g., status of RCRA characteristic waste after treatment). The expectation is complete upon disposal of the treated MLLW (or LLW if exiting RCRA regulatory requirements).

Mixed Low-Level Waste that does not require treatment to meet RCRA Land Disposal Restrictions, or has been treated by the generator, may be directly disposed and counted towards the required volumes of this Performance Incentive. The expectation is complete upon disposal of the MLLW.

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Treat and Dispose Mixed Low-Level Waste**

ORIGINAL

Decommissioned Naval Reactor Compartments may not be counted towards the required volumes of this Performance Incentive.

Measure:

Base:

Expectation 2:

The contractor shall have thermally treated at least 600 m³ (pre-treatment) volume of MLLW by 12/31/05. The waste must be treated to a condition such that the waste is compliant for disposal and meets the RCRA Land Disposal Restrictions (LDR) or shall exit regulatory requirements (e.g., status of RCRA characteristic waste after treatment).

DEFINITIONS: *(define terms)*

CWC – Central Waste Complex
LDR – Land Disposal Restrictions
LLW – Low-Level Waste
MLLW – Mixed Low Level Waste
RCRA – Resource Conservation and Recovery Act

Disposal is defined as the placement of compliant waste into the appropriate waste trench based on the waste acceptance and permit criteria.

The measurement of waste volumes to be counted toward the PI objectives shall be defined as follows:

1. For MLLW requiring treatment prior to disposal, the waste volume shall be based on the pre-treatment waste volume as recorded in the Operational Record for each waste package and/or shipment (bulk waste loads).
2. For MLLW that does not require treatment after generation or has been treated by the generator to meet LDR's, the waste volume shall be based on the disposed waste volume as recorded in the Operational Record for each waste package and/or shipment (bulk waste loads)

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

Measure:

Expectation 1 (Base, Stretch, Super Stretch):

Periodic: Upon submittal of a request for payment of fee, the Contractor shall submit a letter report to RL which documents the quantity of MLLW disposed during the performance period. The report shall include inventories (total volume of waste treated and/or disposed) and the type of treatment utilized.

Annually: The contractor shall annually submit a letter report to RL by October 31, which documents the quantity of MLLW disposed during the previous fiscal year. The report shall include inventories (total volume of waste disposed), processing dates, associated Package Identification Numbers (PIN's), and the type of treatment utilized.

Note: The Periodic submittal will be utilized for progress payment of fee. The Annual report will be utilized to fully validate Contractor performance per this Performance Incentive. Failure of a satisfactory validation, may result in forfeiture of progress fee payment from the previous fiscal year.

**FY2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Treat and Dispose Mixed Low-Level Waste**

ORIGINAL

Completion of any of the "balloon" deliverable as listed in Section 4 shall be documented in a letter report to RL. The report shall include inventories (total volume of waste disposed), processing dates, associated Package Identification Numbers (PIN's), and the type of treatment utilized. Previous submittals may be referenced to avoid re-submission of information previously provided.

Measure:

Base:

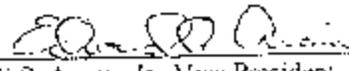
Expectation 2:

The contractor shall submit a letter report to RL documenting the thermal treatment of the 600 m3 of MLLW. The report shall include inventories (total volume of waste treated), treatment dates, associated Package Identification Numbers (PIN's), and a description of the type of treatment utilized.

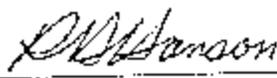
ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

This PI is contingent upon the availability of sufficient Offsite (i.e., commercial and/or DOE Complex) MLLW treatment capacity. If Offsite treatment capacity is limited, the PI treatment volumes may be renegotiated.

**SECTION 6
SIGNATURES**


E.S. Arant, Jr., Vice President
Waste Management Project

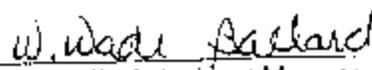
12/20/00
Date


R.D. Hanson, President CEO
Fluor Hanford, Inc.

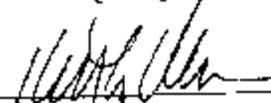
12/20/00
Date


H.E. Bilson, Assistant Manager
For Environmental Restoration and Waste Management

12/20/00
Date


W.W. Ballard, Assistant Manager
For Planning Integration

12/20/00
Date


K.A. Kleir, Manager
Richland Operations Office

12/20/00
Date

FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Certify and Ship TRU Waste

**SECTION 1
GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: FHI-M6
Performance Incentive Short Title: Certify and Ship TRU Waste
Revision Number & Date: Rev. 0, 12/14/00
Maximum Available Incentive Fee: 4.6% of fee available in Contract Clause D.4
Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
 Outcome #2: Transition Central Plateau to support long-term waste management
 Outcome #3: Put DOE Assets to work for the future

**SECTION 3
PERFORMANCE OBJECTIVE (S), MEASURES AND EXPECTATION (S)**

List associated performance objectives, measures, and performance expectations for FY01 through FY06
Identify associated PBS # for each performance objective and/or measures as appropriate.

Performance Objective: Certify and Ship TRU Waste PBS CP-02 (WM03, WM04, WM05 and TP-02)

Measure 1: TRU Waste Certified

Base:

Expectation 1: Certify 400 m³ of TRU waste by 09/30/06.

Stretch:

Expectation 1: Certify an additional 180 m³ of TRU waste (580 m³ total) by 09/30/06.

Super Stretch:

Expectation 1: Certify an additional 300 m³ of TRU waste (880 m³ total) by 09/30/06.

Measure 2: TRU Waste Shipped

Base:

Expectation 1: Complete 48 full shipments of TRU waste to WIPP by 09/30/06.

Stretch:

Expectation 1: Complete an additional 20 full shipments of TRU waste to WIPP (68 total shipments) by 09/30/06.

Super Stretch:

Expectation 1: Complete an additional 40 full shipments of TRU waste to WIPP (108 total shipments) by 09/30/06.

FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Certify and Ship TRU Waste

**SECTION 4
FEE SCHEDULE**

ORIGINAL

Identify fee schedule by performance objective and/or measure(s)

Base = 70%
Stretch = 30%

Measure 1:

PBS CP02 (WM104)

Baseline:

Expectation 1: 15% of the fee allocated to this PI shall be earned as progress payment for certifying 400 m³ of TRU waste, in increments of 10 m³.

15% of the fee allocated to this PI shall be earned as progress payment upon completion of certifying 400 m³ of TRU waste by 9/30/06.

Stretch:

Expectation 1: 10% of the fee allocated to this PI shall be earned as progress payment for certifying an additional 180 m³ of TRU waste, in increments of 10 m³.

Super Stretch:

Expectation 1: \$4.0M in fee for certifying an additional 300 m³ of TRU waste, earned in increments of 10 m³.

Measure 2:

PBS CP02 (WM104)

Base:

Expectation 1: 25% of the fee allocated to this PI shall be earned as progress payment upon completion of 48 shipments of TRU waste to WIPP, in increments of one shipment.

15% of the fee allocated to this PI shall be earned as progress payment upon completion of 48 shipments of TRU waste to WIPP by 9/30/06.

Stretch:

Expectation 1: 20% of the fee allocated to this PI shall be earned as progress payment upon completion of an additional 20 shipments of TRU waste to WIPP (68 total shipments), earned in increments of one shipment.

Super Stretch:

Expectation 1: \$0.4M in fee upon completion of 40 additional shipments of TRU waste to WIPP (108 total shipments), earned in increments of one shipment.

There are no DNFSB or TPA milestones associated with this work scope.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: *Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure.*

Not Applicable

ORIGINAL

FY2001 -- 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Certify and Ship TRU Waste**GENERAL REQUIREMENTS:** In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $[(BCWP-ACWP)/BCWP] \times 100$ greater than 5.0 percent; cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).***Measure 1:****Base, Stretch, Super Stretch:****Expectation 1:**

Certification is defined as performing the necessary data reconciliation activities for each container by completing Attachment 2 (Reconciliation Data Quality Objectives) of Procedure WMH-400, Section 7.1.1.

If volume reduction is utilized for packaging of the TRU waste, the pre-packaging volume may be utilized for completion of this Performance Incentive. For example, if five 55-gallon drums of waste are compacted and packaged in an 85-gallon over-pack drum, then 1 cubic meter of waste may be counted for certification.

Measure 2:**Base, Stretch, Super Stretch:****Expectation 1:**

Each individual shipment is defined as complete upon departure of the TRUPACT's from the Hanford Site.

DEFINITIONS: *(define terms)*

TRU – Transuranic Waste

TRUM – Transuranic Mixed Waste

WIPP – Waste Isolation Pilot Plant

For purposes of completing this Performance Incentive, TRU and TRUM are considered synonymous.

One cubic meter (m³) of TRU is defined as five 55-gallon drums or three 85-gallon drums.

One standard waste box is defined as 1.8 m³ of TRU.

One ten-drum over-pack is defined as 5 m³ of TRU.

A full shipment is defined as containing the maximum amount of containers allowed per WIPP and/or transportation regulations and requirements.

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

ORIGINAL

FY2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Certify and Ship TRU Waste**Measure 1:****Base, Stretch, Super Stretch:****Expectation 1:**

Periodic: Upon submittal of a request for payment of fee, the Contractor shall submit a letter report to RL which documents the quantity (volume) of TRU Waste certified during the performance period.

Annually: The Contractor shall annually submit a letter report to RL by October 31, which documents the quantity of TRU waste certified during the previous fiscal year. The report shall contain the volume of TRU certified, the associated Container Identification Numbers (CIN's) and the completed Attachment 2 (Reconciliation with Data Quality Objectives) of WMH-400, Section 7.1.1, for each container of TRU certified.

Note: The Periodic submittal will be utilized for progress payment of fee. The Annual report will be utilized to fully validate Contractor performance per this Performance Incentive. Failure of a satisfactory validation may result in forfeiture of all or part of the progress fee payment from the previous fiscal year.

Completion of the 400 m³ certification "balloon" deliverable shall be documented in a letter report to RL. The report shall contain the volume of TRU certified, the associated Container Identification Numbers (CIN's) and the completed Attachment 2 (Reconciliation with Data Quality Objectives) of WMH-400, Section 7.1.1, for each container of TRU certified. Previous submittals may be referenced in lieu of re-submission of data that has been provided in previous correspondence.

Measure 2:**Base, Stretch, Super Stretch:****Expectation 1:**

Periodic: Upon submittal of a request for payment of fee, the Contractor shall submit a letter report to RL which documents the shipment of TRU waste during the performance period. The report shall include the shipment date, the volume of TRU shipped (# of drums, boxes, etc.), and justification for any shipment that were not full.

Annually: The Contractor shall annually submit a letter report to RL by October 31, which documents the number of shipments to WIPP. The report shall include the shipment dates and the associated Container Identification Numbers (CIN's).

Note: The Periodic submittal will be utilized for provisional payment of fee. The Annual report will be utilized to fully validate Contractor performance per this Performance Incentive. Failure of a satisfactory validation may result in forfeiture of all or part of the progress fee payment from the previous fiscal year.

The letter reports for Measure 1 and Measure 2 may be combined into one correspondence.

Completion of the 48 shipment "balloon" deliverable shall be documented in a letter report to RL. The report shall include the shipment dates, the associated Container Identification Numbers (CIN's), and any applicable justifications for shipping less than a full shipment. Previous submittals may be referenced in lieu of re-submission of data that has been provided in previous correspondence.

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance, which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

ORIGINAL

FY2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE: Certify and Ship TRU Waste

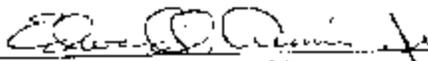
Measure 1:

If changes to the WIPP WAC and/or WIPP Permit requirements invalidate previous certification data or significantly increase or decrease characterization and/or transportation requirements, the Contractor shall submit to RL a revised path forward within 20 calendar days as the basis for a baseline change request and renegotiation of this Performance Incentive Expectation.

Measure 2:

It is assumed that TRUPACT and transportation services will be available to meet the shipment schedule of this Performance Incentive. If due to DOE Complex commitments, the Contractor is unable to perform the required shipments to WIPP, this Performance Incentive may be renegotiated.

SECTION 6
SIGNATURES


E.S. Arami, Jr., Vice President
Waste Management Project

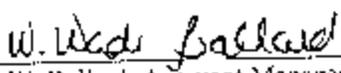
12/20/00
Date


R.D. Hanson, President and CEO
Fluor Hanford, Inc.

12/20/00
Date


H.E. Bilson, Assistant Manager
For Environmental Restoration and Waste Management

12/20/00
Date


W. W. Ballard, Assistant Manager
For Planning Integration

12/20/00
Date


K.A. Klein, Manager
Richland Operations Office

12/20/00
Date

**FY 2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
 Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

**SECTION 1
 GENERAL INFORMATION**

Performance Incentive Number: FHI-M7
 Performance Incentive Short Title: Accelerate Readiness To Receive K-Basin Sludge
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: 3% of the fee available in Contract clause B.4
 Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE (S), MEASURES AND EXPECTATION (S)**

*List associated performance objectives, measures, and performance expectations for FY 01 through FY 06.
 Identify associated PBS # for each performance objective and/or measures as appropriate.*

Performance Objective: Prepare T-Plant for Receipt of K-Basin Sludge
 PBS CP02 (WM03, WM04, WM05 and TP-02)

Measure 1: Complete physical activities necessary to store K-Basin sludge at T-Plant

Base:

- Expectation 1:** Clear 10 sections of the T-Plant canyon deck.
- Expectation 2:** Clear 8 T-Plant canyon cells.
- Expectation 3:** Remove 4 large pieces of excess equipment from the canyon deck (2 PUREX towers, hydraulic shears, drill press).
- Expectation 4:** Remove all Shippingport fuel from T-Plant
- Expectation 5:** Complete expectations 1-4 by 10/30/02.

Measure 2: Complete Contractor Readiness Assessment

Base:

- Expectation 1:** Complete Contractor Readiness Assessment and declare readiness for RL Readiness Assessment for K-Basin floor and pit sludge receipt, by 10/30/02 (Ensures T-Plant Readiness to support SNF TPA M-34-08, begin K-Basin sludge removal 12/31/02 milestone; Completes TPA Milestone M-91-20 due 12/31/02.)
- Expectation 2:** Complete Contractor Readiness Assessment and declare readiness for RL Readiness Assessment for K-Basin canister and fuel wash sludge receipt, by 1/1/04 (Completes TPA Milestone M-91-22 – due 2/29/04)

**FY 2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

Measure 3: Prepare T-Plant to Support M-91 Activities

Stretch:

- Expectation 1:** De-post the T-Plant canyon as a "High Radiation Area" by 9/30/01.
- Expectation 2:** De-post the T-Plant canyon as an "Airborne Radiation Area" by 1/1/04.
- Expectation 3:** Clear remaining stored equipment from canyon deck by 6/30/06.

**SECTION 4
FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

Base = 75%
Stretch = 25%

Measure 1: Complete physical activities necessary to store K-Basins sludge at T-Plant **PBS CP02 (WM04)**

Base:

Expectation 1: 5% of the fee allocated to this PI shall be earned as a progress payment upon completion of clearing 10 sections of the T-Plant canyon deck, payable in increments of each section.

Expectation 2: 10% of the fee allocated to this PI shall be earned as a progress payment upon completion of clearing 8 T-Plant canyon cells, payable in increments of each cell.

Expectation 3: 5% of the fee allocated to this PI shall be earned as a progress payment upon removal of all equipment & large pieces of excess equipment (2 PUREX towers, hydraulic shears, drill press) from the T-Plant canyon deck.

Expectation 4: 10% of the fee allocated to this PI shall be earned as a progress payment upon removal of all Shippingport fuel from T-Plant, payable in increments of 2.5% fee for each 25% of fuel removed.

Expectation 5: 15% of the fee allocated to this PI shall be earned as a progress payment for completion of expectations 1-4 by 10/30/02, decreasing linearly by day to 0% on 11/30/02.

***Measure 2: Complete Contractor Readiness Assessment** **PBS CP02 (WM04)**

Base:

Expectation 1: 15% of the fee allocated to this PI shall be earned as provisional fee upon completion of the Contractor Readiness Assessment and declaration of readiness for RL Readiness Assessment for K-Basin floor and pit sludge receipt, by 10/30/02. The fee decreases linearly by day to 0% on 11/30/02. (Ensures T-Plant Readiness to support SNF TPA M-34-03, begin KE Basin sludge removal - 12/31/02 milestone; Completes TPA Milestone M-91-20* - due 12/31/02.)

Provisional - converts to progress when first container of K-Basin sludge is put into T-Plant cell/deck. If readiness review must be repeated or K-Basin floor and pit sludge is not moved to T-Plant by 9/30/03, provisional fee is forfeited and shifted to 8/31/04 completion of K-Basin sludge removal per expectation 3 of PI FHJ-M1, Accelerate Deactivation of K-Basins.

Expectation 2: 15% of the fee allocated to this PI shall be earned as a progress payment upon completion of the Contractor Readiness Assessment and declaration of readiness for RL Readiness Assessment for K-Basin canister and fuel wash sludge receipt by 1/1/04. The fee decreases linearly by day to 0% on 2/29/04. (Completes TPA Milestone M-91-22* - due 2/29/04.)

**FY 2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

Measure 3: Prepare T-Plant to Support M-91 Activities

PBS CP02 (WM04)

Stretch:

Expectation 1: 5% of the fee allocated to this PI shall be earned as progress payment upon completion of depositing the T-Plant canyon as a "High Radiation Area" by 9/30/01. The fee will decrease linearly by day to 0% on 2/28/02.

Expectation 2: 10% of the fee allocated to this PI shall be earned as progress payment for completion of depositing the T-Plant canyon as an "Airborne Radiation Area" by 1/1/04. The fee will decrease linearly by day to 0% on 10/1/04.

Expectation 3: 10% of the fee allocated to this PI shall be earned as progress payment for clearing the remaining stored equipment from the canyon deck by 6/30/06. The fee will decrease linearly by day to 0% on 8/30/06.

TPA/DNFSB STANDARD PENALTY STATEMENT: A provisional penalty of up to \$10K/week may be imposed for any missed TPA or DNFSB milestone that is considered interim to a final incentivized milestone designated with an asterisk (*). Provisional penalties may be waived by the Contracting Officer if the final (*) contractual milestone is met and/or the Contracting Officer determines that no fines, penalties, or significant adverse impacts, will result from the missed interim milestone.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway; only requirements for this Performance Measure.

Not Applicable

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $(((BCWP - ACWP) / BCWP) \times 100)$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance measure, at the Project Baseline Summary level identified in Section 4, Fee Schedule.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress) Include Baseline documentation/data against which completion documentation should be compared)

Measure 1:

Expectation 1: The Contractor shall clear 10 Canyon Deck Sections. The sections cleared must come from Sections 3 through 16.

Expectation 2: The Contractor shall clear 8 Canyon Cells. Head End Cells, the tunnel, and the PWR pool may not be counted for these 8 Cells.

Expectation 3: The Contractor shall remove 4 pieces of large excess equipment from the canyon deck. The 4 items are the two PUREX towers, the large hydraulic shears, and the excess drill press.

All materials and equipment removed from the canyon deck and cells shall be disposed or stored in accordance with the requirements of JINF-EP-0063. Materials and equipment removed from cleared deck sections and cells are not to be stored in the T-Plant Canyon without written Contracting Officer Representative authority.

**FY 2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

Expectation 4: The Contractor shall remove all Shippingport Fuel from the T-Plant Canyon and transfer it to the Canister Storage Building. Shippingport Fuel is not considered removed until it is placed in storage in the Canister Storage Building.

Expectation 5: Complete expectations 1 through 4.

Measure 2:

Expectation 1: Completion is defined as the submittal of a letter to RI, declaring Contractor Readiness for Operations for receipt of K-Basin's floor and pit sludge. All pre-start items discovered during Contractor readiness activities must be closed prior to submission of the readiness letter.

Expectation 2: Completion is defined as the submittal of a letter to RI, declaring Contractor Readiness for Operations for receipt of K-Basin's canister and fuel wash sludge. All pre-start items discovered during Contractor readiness activities must be closed prior to submission of the readiness letter.

Measure 3:

Expectation 1: Completion is defined as permanently de-posting the Canyon as a high Radiation Area. All high radiation equipment in the Canyon is to be removed or configured such that entries into the canyon do not require High Radiation controls. High Radiation equipments may be moved or segregated and access limited through the use of fencing or similar barriers. If this method is utilized, no more than one Canyon deck section may be designated as a High Radiation Area. Temporary posting of the canyon as a high Radiation Area for applicable activities (such as fuel or sludge movement) is allowed, but de-posting is to occur as soon as practicable upon completion of the activity.

Expectation 2: Completion is defined as permanently de-posting the Canyon as an Airborne Radiation Area. De-posting is to be accomplished through the removal of contaminated equipment and the decontamination of the Canyon surfaces to a level that allows for de-posting as an Airborne Radiation Area. Restricting movement to certain areas of the deck such as the walk path in order to de-post the Canyon is not considered satisfactory completion of this expectation. However, temporary posting of the Canyon as an Airborne Radiation Area for necessary evolutions or activities (such as work performed in Canyon cells) is allowed, but decontamination and de-posting are to occur as soon as practicable following completion of the work.

Expectation 3: The Contractor shall clear all remaining excess equipment and waste from the Canyon deck. The Canyon deck is defined as all sections (1-2C) including the Head End.

All materials and equipment removed from the canyon deck and cells shall be disposed or stored in accordance with the requirements of HNF-EP-0063. Materials and equipment removed from cleared deck sections are not to be stored in the T-Plant Canyon without written Contracting Officer Representative authority.

DEFINITIONS: *(define terms)*

CSB Canister Storage Building
LLW Low Level Waste
TRU Transuranic Waste

T-Plant Canyon Deck refers to the floor level area atop the cell cover blocks within the canyon of the 221-T Building. It does not include any gallery areas. Each deck section is approximately 40 feet in length, delineated by expansion joints in the canyon vertical sidewalls, and extends for approximately 37 feet in width delineated by the canyon sidewalls. Each section is numbered according to the building section numbers located on the canyon vertical sidewalls. (For a typical layout, reference: HNF-SD-WM-ISB-006, *Interim Safety Basis for Solid Waste Facilities "T Plant," Facility Description, Figure 1 - 6*).

**FY 2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

T-Plant Canyon Cells refers to the process cells below the canyon deck that are accessed by removal of the cover blocks placed on top of the majority of the cells.

Cleared is defined as removal from the 221-T Facility of all excess material and equipment within a numbered section of the Canyon Deck or Cell. Removal of residual radioactive contamination is not included (i.e., the area will not be decontaminated) for the clearing deliverable. However, it may be required for de-posting of the Canyon as a Airborne Radiation Area.

Shippingport Fuel is defined as the Shippingport Reactor Blanket Assembly Spent Nuclear Fuel currently stored in the Canyon Fuel Pool in Cell 2R.

Floor and pit sludge is the chemically stable sludge that will be stored "dry" in a Canyon cell or on the Canyon deck.

Canister and fuel wash sludge is defined as sludge requiring "wet" storage underwater to maintain chemical stability. This sludge will be stored in Cell 2R after removal of the Shippingport Fuel.

PUREX towers are defined as the large chemical separation towers removed from PUREX and stored on the T-Plant Canyon deck. It is expected that the two towers will have a combination of TRU and LLW components and that size reduction operations will be required to separate the TRU and LLW components.

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

Measure 1:

Expectation 1: The Contractor shall submit to RL a letter report documenting the numbered deck sections cleared and the material and equipment removed from the facility. The report will include:

- Before and after photographs of each deck section cleared, and
- An inventory of the material and equipment removed, with a listing of the storage or disposal facility(s) to which the inventory was transferred.

Expectation 2: The Contractor shall submit to RL a letter report documenting the numbered cells cleared and the material and equipment removed from the facility. The report will include:

- Before and after photographs of each cell cleared, and
- An inventory of the material and equipment removed, with a listing of the storage or disposal facility(s) to which the inventory was transferred.

Expectation 3: The Contractor shall submit to RL a letter report documenting the removal of the large excess equipment (2 PUREX towers, hydraulic shears, and the large drill press) from the Canyon. The report will include:

- Before and after photographs of the equipment, and
- An inventory of the material and equipment removed, with a listing of the storage or disposal facility(s) to which the inventory was transferred.

Expectation 4: The Contractor shall submit to RL a letter report listing each Shippingport Fuel element and the date of transfer to CSB. The report shall include before and after pictures of the fuel pool and appropriate in-process pictures of fuel removal operations. The report shall include a short narrative of the fuel removal operations.

**FY 2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge**

ORIGINAL

Expectation 5: The Contractor shall submit to RL a letter report declaring completion of expectations 1 through 4. The letter report shall contain references to other applicable documents and provide evidence of satisfactory completion of all the expectations 1 through 4.

Measure 2:

Expectation 1: The Contractor shall submit to RL a letter declaring Readiness for Operations for receipt of K-Basin's floor and pit sludge.

Expectation 2: The Contractor shall submit to RL a letter declaring Readiness for Operations for receipt of K-Basin's canister and fuel wash sludge.

Measure 3:

Expectation 1: The Contractor shall submit to RL a letter report describing the activities performed to de-post the Canyon as a High Radiation Area. A sample of survey data and a map and pictures of any designated High Radiation Areas within the Canyon are to be included with the report.

Expectation 2: The Contractor shall submit to RL a letter report describing the activities performed to de-post the Canyon as an Airborne Radiation Area. A sample of survey data is to be included with the report.

Expectation 3: The Contractor shall submit to RL a letter report documenting the numbered deck sections cleared and the material and equipment removed from the facility. The report will include:

- Before and after photographs of each deck section cleared, and
- An inventory of the material and equipment removed, with a listing of the storage or disposal facility(s) to which the inventory was transferred.

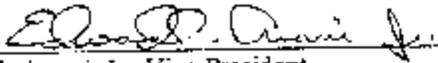
ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance, which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

NONE

FY 2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Accelerate Readiness To Receive K-Basin Sludge

ORIGINAL

SECTION 6
SIGNATURES



E.S. Aromi, Jr., Vice President
Waste Management Project

Date

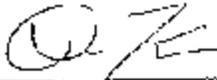
12/20/00



R.D. Hanson, President CEO
Fluor Hanford, Inc.

Date

12/20/00



P.G. Loscoe, Director
Office of Spent Nuclear Fuels

Date

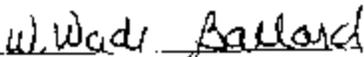
12/20/00



H.E. Bilson, Assistant Manager
For Environmental Restoration and Waste Management

Date

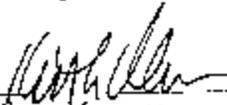
12/20/00



W.W. Ballard, Assistant Manager
For Planning Integration

Date

12/20/00



K.A. Kiem, Manager
Richland Operations Office

Date

12/20/00

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

**SECTION 1
 GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: FHI-M8
 Performance Incentive Title: 300 Area Cleanup
 Revision Number & Date: Rev. 0, 12/14/2000
 Maximum Available Incentive Fee: 1.9% of the fee available in Contract clause B.4.
 Performance Incentive Type: Base Stretch Superstretch
 (Check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE(S) MEASURE(S) & EXPECTATION(S)**

List associated performance objectives, measures, and performance expectation. Identify associated PBS# for each performance objective and/or measures as appropriate.

Performance Objective: Disposition Surplus Buildings and Excess Hanford Uranium PBS # RCC6
(TP04, TP08, TP-14)

Measure 1: Accelerate 300 Area Cleanup

Expectation 1: Deactivate 324/327 buildings

- Base: Complete 26.5% (~ \$55.0M) of the remaining 324/327 Building Project life cycle baseline work scope and maintain or accelerate the Deactivation schedule. Work scope performed must include:
- B-Cell cleanout completion
 - Ship B-Cell Waste (LLW/TRU) to 200 Area Burial Ground
- Stretch: Complete an additional 2.5% of the remaining 324/327 Building Project life cycle baseline work scope.

Expectation 2: Disposition surplus facilities

- Base: Disposition 3902A, 3902B, and 303-K by 9/30/01
- Stretch: Disposition the 377 building by 6/30/02

Expectation 3: Disposition all uranium bullets, all remaining uranium dioxide, the surface contaminated fuel and scrap materials located in the 200 and 300 Areas, and the thorium-232 located in the 303-K facility. (Base) by 9/30/01

Measure 2: Support River Corridor Project (RCP) Contract Transition

Expectation 1:

- Stretch: Support RCP contract transition effective 7/1/02.

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

**SECTION 4
 FEE SCHEDULE**

ORIGINAL

Identify fee schedule by performance objective and/or measure(s)

Base = 65% of the fee available for this Performance Incentive.
 Stretch = 35% of the fee available for this Performance Incentive.

Measure 1: Accelerate 300 Area Cleanup

PBS RC06 (TP04, TP08, TP14)

Expectation 1: Deactivation of 324/327 Buildings to support accomplishment of the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) M-89-02 and M-89-00.

Base: 35% of the fee available for this Performance Incentive shall be earned for completing 26.5% (~\$55M) of the remaining 324/327 Buildings' Deactivation Project life-cycle baseline work scope by 6/30/2002. Provisional fee payments will be made for each 5% of scope completed determined by earned value (i.e., 2% of fee available for this PI, for each \$2,750K of BCWS completed) Provisional fee payments will convert to progress fee upon completion of all of the 26.5% remaining 324/327 Deactivation Project life-cycle baseline work scope, as measured by earned value.

20% of the fee available for this PI shall be earned as a progress payment, for completion of B-Cell cleanout and shipment of B-Cell waste (LLW/TRU) to 200 Area Burial Ground by 7/31/01.

Stretch: 15% of the fee available for this PI shall be earned as progress payments for completion of additional work scope in excess of 26.5% (~\$55M) of the 324/327 Building Project life-cycle baseline, as follows:

<u>% Complete</u>	<u>Fee Earned</u>
2.5	10%
2.0	8%
1.5	6%
1.0	4%
0.5	2%

Expectation 2: Disposition Surplus Facilities

Base: 5% of the available fee for this Performance Incentive shall be earned as progress payments as follows:

- Demolish two structures, 3902A and 3902B, and one building, 303-K, by 9/30/2001.
- Demolition scope will be removal of the physical structure or building to a slab-on-grade or equivalent condition.
- No soil remediation will be considered in the scope of this Performance Expectation.

Stretch: 5% of the available fee for this Performance Incentive shall be earned as progress payments as follows:

- Demolish the 377 Building by 6/30/2002.
- Demolition scope will be removal of the building structure above grade and all exposed equipment below grade.
- No soil remediation will be considered in the scope of this Performance Expectation.

Expectation 3: Disposition all uranium billets, all remaining uranium dioxide, the surface contaminated fuel and scrap materials located in the 200 and 300 Areas, and the thorium-232 located in the 303-K facility, by 9/30/01.

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

ORIGINAL

Base: 5% of the available fee for this Performance Incentive shall be earned as a progress payment upon completion of this Expectation, in accordance with the criteria set forth in Section 5.

Measure 2: Support RCP Contract Transition

Expectation 1: Support RCP contract transition.

Stretch: 15% of the available fee for this Performance Incentive shall be earned as a progress payment for supporting the RCP Contract Transition, in accordance with the RL/Contractor Transition Plan.

TPA/DNFSB STANDARD PENALTY STATEMENT: A provisional penalty of up to \$10K/week may be imposed for any missed TPA or DNFSB milestone that is considered interim to a final incentivized milestone designated with an asterisk (*). Provisional penalties may be waived by the Contracting Officer if the final (*) contractual milestone is met and/or the Contracting Officer determines that no fines, penalties, or significant adverse impacts, will result from the missed interim milestone.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this Performance Incentive. The requirements listed below are the gateway only requirements for this Performance Incentive.

NONE

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $(((BCWP-ACWP)/BCWP) \times 100)$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level, identified in Section 4, Fee Schedule.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared.

Measure 1: Accelerate 300 Area Cleanup

Expectation 1:

Base: The Contractor shall complete 26.5% (-SS5M) of the remaining 324/327 Building Project life-cycle baseline work scope. The remaining 324/327 Building Project life-cycle BCWS (i.e., remaining FY02 and beyond) cannot be more than 80% of BCWS for FY01 - FY06 as established on 9/30/01, and the 324 and 327 Building deactivations will still be scheduled for completion no later than 9/29/06 and 9/7/07 respectively.

The work scope to be completed shall include among others:

- B-Cell cleanout by 7/31/01, as defined by the definition of completion of TRP-99-901 as identified in the FY01 Multi-Year Work Plan (MYWP) for Project Baseline Summary (PBS) number TP-08
- Shipment of B-Cell waste (LLW/TRU) from B-Cell cleanout, to the 200 Area by 7/31/01 as defined by the definition of completion of TRP-01-903 as identified in the FY01 MYWP for TP-08.

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

ORIGINAL

The 324 Building life-cycle project critical path float is maintained with zero or positive float from the established baseline as established at the start of FY01, as measured at 6/30/02 (i.e., ground can't be lost during FY01 in achieving 324 Building total project completion, from the status at the start of FY01 as measured at 6/30/02).

Stretch: The Contractor shall complete an additional 2.5% of remaining 324/327 Building Project life-cycle baseline work scope.

Expectation 2: Disposition Surplus Facilities

Base: Demolish and remove two structures, 3902A and 3902B, and one facility, 303K, in the 300 Area. This Expectation will be complete upon accomplishment of the foregoing and the approval of the Construction Completion Document by the Cognizant FH River Corridor Project Director and the Construction Completion Document is issued to the Assistant Manager for Nuclear Materials and Facility Stabilization or his designee.

Stretch: Demolish and remove Building 377. This Expectation will be complete upon the accomplishment of the foregoing and the approval of the Construction Completion Document by the cognizant FH River Corridor Project Director and the Construction Completion Document is issued to the Assistant Manager for Nuclear Materials and Facility Stabilization or his designee.

Expectation 3: Disposition all uranium billets, all remaining uranium dioxide, the surface contaminated fuel and scrap materials located in the 200 and 300 Areas, and the thorium-232 located in the 303-K facility.

Base: Successful completion requires disposition of all identified forms of uranium to defined disposition pathway endpoints as defined in EA-1319 of June 2000.

- Complete the removal and property transfer of all uranium billets (approx. 235 MTU), and all remaining uranium dioxide (approx. 4.47 MTU) to the DOE Portsmouth Site in Ohio as agreed to in the Transfer of Nuclear Materials from the Hanford Site to the Oak Ridge Operations/Portsmouth Site Shipper/Receiving Plan of June 2000, as documented in DOE/NRC F 741 "US Department of Energy and US Nuclear Regulatory Commission Nuclear Material Transaction Report" forms.
- Execute the plan to remove and relocate approx. 140 MTU of surface contaminated fuel, and scrap material.
- Prepare and execute a plan to disposition thorium materials located in the 303K facility away from the 300 Area to the 200 Areas.

Measure 2: Support RCP Contract Transition

Expectation:

Stretch: Submit the 300 Area RCP Transition Plan to DOE RL by 04/01/02. Submit documentation of completion of 300 Area RCP Transition Plan activities, by 07/30/02.

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

ORIGINAL

DEFINITIONS: *(Define terms)*

As defined in EA-1319 of June 2000 (except thorium):

- Billets - Metallic forms of uranium mechanically formed into cylindrical shapes (billets) stored in the 300 Area FSS facilities
- Thorium - Thorium-232 materials stored in the 300 Area (303K) FSS facilities

ACWP Actual Cost of Work Performed
BCWP Budgeted Cost of Work Performed
BCWS Budgeted Cost of Work Scheduled
BAC Budget At Completion

Critical Path The longest time path through a network from the initial project activity to the final project completion milestone. It is the chain of activities that controls the overall project completion time and has the least amount of total float.

EAC Estimate At Completion

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice, the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above.*

Measure 1: Accelerate 300 Area Cleanup

Expectation 1: The Contractor shall submit a letter report to RL documenting the following:

- Base: Letter Report: The contractor shall submit a letter report to RL by 07/30/02, which documents:
- Percent of the 324/327 Building life cycle work scope complete and associated BCWP, BCWS, and ACWP
 - What work scope was completed
 - The 324/327 building life cycle baseline BCWS as of 06/30/02

- Stretch: Letter Report: The contractor shall submit a letter report to RL by 07/30/02, which documents:
- Percent of 324/327 Building life cycle work scope in excess of 26.5% (- \$5M) completed and associated BCWP, BCWS, and ACWP
 - What workscope was completed

Baseline Change Request: The contractor shall submit a baseline change request reflecting the acceleration in life cycle baseline schedule.

Expectation 2: The Contractor shall submit a letter report to RL which includes:

- Base:
- Construction Completion Document for demolition of two structures 3902A and 3902B
 - Construction Completion Document for demolition of 303K
 - Before and after photos of each facility location,
 - An inventory of the material and equipment removed with a listing of the storage or disposal facility(ies) to which the inventory was transferred,

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

Stretch:

- Construction Completion Document for demolition of 377
- Before and after photos of the facility location,
- An inventory of the material and equipment removed with a listing of the storage or disposal facility(ies) to which the inventory was transferred,

ORIGINAL

Expectation 3: The Contractor shall submit a letter report to RL which includes:

- Reconciled MC&A documentation (DOE/NRC F 741 Forms) referenced in DOE Order 474.1.

Measure 2: Support RCP Contract Transition

Expectation: The Contractor shall submit a letter report to RL which includes:

- Submission of 300 Area RCP Transition Plan
- Submission of 300 Area RCP Transition Plan activities

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

Assumption 1: Buildings and structures to be demolished are not historically significant and will not be required to remain in place or be relocated.

Assumption 2: Certificate of Compliance (COC) for the SARP, HNF-SD-TP-SARP-019, revision 0 (already submitted to RL) for the transport of 5 billet boxes per trailer to Portsmouth, Ohio, will be issued by January 31, 2001.

Assumption 3: SARP, HNF-SD-NR-SARP-0001, revision 2, for the transport of fuel boxes to 200 Area, will be submitted to RL by February 15, 2001, for RL's approval by March 31, 2001.

Assumption 4: DOE-Oak Ridge will authorize the transfer of uranium billets and uranium dioxide to Portsmouth, Ohio, by January 19, 2001.

Assumption 5: Approval for shipment of the B-Cell waste containers (solid waste disposal boxes) that are greater than 1 R/hr to Central Waste Complex will be received not later than January 24, 2001, subject to receipt of satisfactory documentation from FWH by January 19, 2001.

FY 2001-2006 CONTRACT MULTI-YEAR PERFORMANCE INCENTIVE: 300 Area Cleanup

SECTION 6
SIGNATURES

ORIGINAL

N.C. Boyter

12-20-00

Date

N.C. Boyter, Vice President
River Corridor Project
Fluor Hanford, Inc.

R.D. Hanson

12/20/00

Date

R.D. Hanson, President and CEO
Fluor Hanford, Inc.

David S. Evans

12/20/00

Date

P.M. Knollmeyer, Assistant Manager
For Nuclear Materials and Facilities Transition

W.W. Ballard

12/20/00

Date

W.W. Ballard, Assistant Manager
For Planning & Integration

K.A. Klein

12/20/00

Date

K.A. Klein, Manager
Richland Operations Office

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Groundwater Vadose Zone**

ORIGINAL

**SECTION 1
GENERAL INFORMATION**

Performance Incentive Number: FHI-M9
Performance Incentive Short Title: Groundwater Vadose Zone
Revision Number & Date: Draft 1, 12/13/00 (Draft will be finalized 9/30/01)
Maximum Available Incentive Fee: 7.6% of the fee available in Contract Clause 3.4
Performance Incentive Type: Base Stretch Superstretch
(check appropriate box)

**SECTION 2
PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
PERFORMANCE OBJECTIVE (S), MEASURES AND EXPECTATION (S)**

List associated performance objectives, measures, and performance expectations for FY01 through FY06
Identify associated PRS # for each performance objective and/or measures as appropriate.

Performance Objective: The groundwater vadose zone PI encompasses Groundwater/Vadose Integration, 200 Area Remedial Action, and Groundwater Management workscope.

The Groundwater/Vadose Integration coordinates and focuses site characterization effort, and puts key assessment information under site configuration control.

The objective of the 200 Area Remedial Action is to complete the cleanup of soil-containment sites (non-link farm related) consistent with the 200 Area RI/FS implementation Plan, Tri-Party Agreement milestones, and site-wide planning outcomes for the Central Plateau.

The objective of 200 Area Groundwater Remediation is to arrest the 200 Area groundwater plumes, reducing the movement of material from the Central Plateau.

The Groundwater Management focuses on remediation of groundwater and long-term protection of groundwater resources.

**SECTION 4
FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure.

No; Applicable

**FY2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Groundwater Vadose Zone**

ORIGINAL

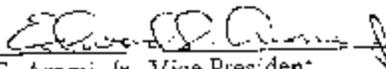
GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:
1. Meet the specific completion criteria and expectations set forth in this Performance Incentive; and
2. Not incur any unfavorable cost variance percentage $(((BCWP-ACWP)/BCWP) \times 100)$ greater than 5.0 percent cumulatively from 10/01/00, measured at the end of the last expectation date of each performance-measure, at the Project Baseline Summary level.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).*

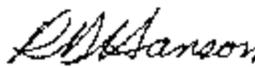
COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED: *(For reasonably foreseeable impacts to performance, which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

**SECTION 6
SIGNATURES**


E.S. Aromi, Jr., Vice President
Wastewater Management Project

12/20/00


R.D. Hanson, President CEO
Fluor Hanford, Inc.

12/20/00

Date


H.E. Bilson, Assistant Manager
For Environmental Restoration and Waste Management

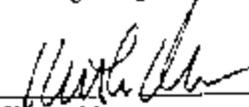
12/20/00

Date


W. W. Ballard, Assistant Manager
For Planning Integration

12/20/00

Date


K.A. Klein, Manager
Richland Operations Office

12/20/00

Date

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

**SECTION 1
 GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: FHI - Comprehensive-1
 Performance Incentive Title: Comprehensive Performance
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: Up to 20% of the fee available in Contract Clause B.4
 Performance Incentive Type: Regular Stretch Superstretch
(Check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE (S) MEASURE (S) & EXPECTATION (S)**

List associated performance objectives, measures, and performance expectation. Identify associated PBS# for each performance objective and/or measures as appropriate

- Performance Objective/Measure 1 - Safety: Protect worker safety and health, public safety and health, and the environment.
- Performance Objective/Measure 2 - Project and Operational Management: Provide project and operational management necessary to achieve project results.
- Performance Objective/Measure 3 - Stewardship: Provide stewardship of Hanford assets and resources; and acquire goods and services fairly, cost effectively, and competitively.
- Performance Objective/Measure 4 - Effective Leadership: Provide leadership to ensure management responsiveness.
- Performance Objective/Measure 5 - Effective Interface with and Support of other Site Contractors: Provide efficient and cost effective site services equitably to other site contractors; collaborate and participate proactively with other site contractors to meet Hanford missions and key outcomes.

**SECTION 4
 FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

- Performance Objective/Measure 1 - Safety: Negative fee only up to 30% of fee allocated to this Performance Incentive
- Performance Objective/Measure 2 - Project and Operational Management: Incentive fee of approximately 35% of fee allocated to this Performance Incentive.
- Performance Objective/Measure 3 - Stewardship: Incentive fee of approximately 15% of fee allocated to this Performance Incentive.
- Performance Objective/Measure 4 - Effective Leadership: Incentive fee of approximately 25% of fee allocated to this Performance Incentive.
- Performance Objective/Measure 5 - Effective Interface with and Support of other Site Contractors: Incentive fee of approximately 25% of fee allocated to this Performance Incentive.

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

**SECTION 5
PERFORMANCE REQUIREMENTS**

ORIGINAL

PREVIOUS YEAR'S GATEWAY: *Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this Performance Incentive. The requirements listed below are the gateway only requirements for this Performance Incentive.*

None

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Fully comply with all terms and conditions of the Contract. Nothing in this Performance Incentive shall relieve the Contractor from complying with any terms and conditions of the Contract, and
2. Meet the specific completion criteria and expectations set forth in this Performance Incentive.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress) Include baseline documentation/data against which completion documentation should be compared.*

Performance Objective/Measure 1 - Safety: The Contractor shall protect worker safety and health, public safety and health, and the environment.

Performance Expectations:

- Protect workers, the public and the environment from adverse safety and health impacts.
- Maintain the Integrated Safety Management process and utilize performance measurements and feedback for continuous improvement. Ensure operations are conducted in accordance with the approved ISMS System Description.
- Self-disclose regulatory non-compliance and enact self-correction of the situation in a timely manner in order to maintain compliance with applicable federal, state, and local statutes and regulations.
- In accordance with DEAR Clause 970.5204-2 (dated June 1997), and reference to DOE Policy 450.5 as a guide, and the Contractor's memorandum FH-0005248, dated 9/26/00, review, update, and submit, for DOE-RL approval, safety performance objectives, performance measures, and commitments.

Determination of Fee

Up to 30% of fee available for this Performance Incentive will be forfeited if the Contractor fails to satisfactorily meet the expectations above. The determination as to the overall effectiveness of the Contractor's performance against this Performance Objective/Measure shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations above, and giving consideration to input provided by Direct Reports to the RL Manager.

Determination of non-compliance with the approved ISMS System Description and/or applicable regulatory requirements may be based on input from the following sources: (1) written enforcement actions from regulatory agencies, (2) findings of DOE-RL staff, and (3) input from DNFSB members and staff. Determination shall in part be based on potential or real impact to protection of the workers, the public and the environment. Consideration will be given to such factors as severity, seriousness, and number of violations, toxicity, volume, persistence and/or duration of the violation.

Performance Objective/Measure 2 - Project and Operational Management: Provide project and operational management necessary to achieve project results and address areas for improvement.

- 2A. Project Management/Control: Provide project management and control based on Fluor, industry, and contract requirements that provides effective Baseline Management:

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

ORIGINAL

Performance Expectations:

- Establish/maintain a high quality, integrated technical baseline for assigned scope. Baseline estimates should be activity based and be consistently generated across all projects. Baseline estimates must be independently validated. Baseline products shall adhere to Baseline Update Guidance.
- Establish/maintain a Fluor Operations Center approach to project management and ingrain the Fluor corporate approach to project management and execution consistently across all projects.
- Establish/maintain an effective Baseline Change Request (BCR) process that is efficient, timely and effective.
- Partner with DOE-RL to identify and remove low value requirements and other barriers in order to accelerate projects and/or reduce costs.
- Provide DOE-RL with monthly reports at the project level to include cost and schedule performance data (earned value) at one level below the PBS level of the FY 2001 WBS. Include the status of technical scope via accomplishments, issues, and critical performance measures and effectively communicate spending forecast and estimated cost at completion for all projects.
- Maintain an earned value management system that generally conforms to the ANSI/EAI Standard 748, Earned Value Management System (EVMS).
- Eliminate, based upon the quality of technical baselines, the requirement for submission of MYWPs and AWP's.
- Provide high quality specifications that result in high quality engineering designs, procurements and construction with the appropriate level of safety margin. Eliminate unnecessary added cost due to over design or rework.

2B. Effective Financial Management: The Contractor shall fulfill its contractual obligation in a fiscally sound and responsible manner by:

Performance Expectations:

- Performing periodic assessments and taking corrective actions to achieve cost plus commitments at each funds control point (1) that do not exceed FY Budget Authority (BA) and the beginning prior year uncosted obligations, (2) that are for DOE authorized work scope, and (3) are within the time limitation established by the Appropriation.
- Notifying DOE-RL promptly, in writing, when there is a reason to believe any funds control point(s) will be exceeded, along with a proposed corrective action plan.
- Notifying DOE-RL promptly when there is a reason to believe that funds control point(s) will be substantially under-run.

2C. Operational Management: The Contractor shall provide Operational Management necessary to achieve project results by:

Performance Expectations:

- Establish/maintain work control systems that ensure procedures, resources, and material are ready for craft to do their job so that worker efficiency is continuously improved toward best-in-class performance for similar industry.
- Demonstrate an operational management process that focuses on management presence in the field observing work activities, root cause analysis, tracking/trending, lessons learned reporting, corrective action, management, feedback and continuous improvement.

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

ORIGINAL

2D. Science and Technology Innovation: The Contractor shall effectively plan and deploy technical innovations to reduce technical risk, reduce cost or improve clean up results and enhance the Hanford Site's ability to achieve its missions.

Performance Expectations:

- Conduct science and technology reviews to proactively identify and quantify areas of high technical risk/uncertainty, and develop near and long-term mitigation plans (e.g., S&T plans, technology roadmaps). These plans will include Technology Insertion Points (TIPs) and S&T Data. Technology insertion shall be included within the appropriate baseline and adequately executed to achieve project success.

Determination of Fee:

The fee determination shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations and criteria above, and giving consideration to input provided by Direct Reports to the RL Manager.

Performance Objective/Measure 3 - Stewardship: Provide stewardship of Hanford assets and resources; and acquire goods and services fairly, cost effectively, and competitively.

3A. Put DOE assets to work for the future: Leverage Hanford assets to further economic transition and effective furtherance of putting DOE assets to work for the future.

Performance Expectation:

- Focus on property that is free releasable, with minimal or no radioactive contamination. The property shall be evaluated and selected based on the Contractor's knowledge, experience, potential economic value, and DOE-RL requirements.
- Aggressively pursue transitioning excess/underutilized assets for reuse and to benefit economic transition.

3B. Achieve Effective Small Business Advocacy Program: The Contractor shall demonstrate their purchasing system includes an effective small business advocacy program to support DOE's responsibility to award a fair proportion of DOE appropriated dollars to small business concerns.

Performance Expectation:

- Provide an annual plan, based on executable baselines, to meet small business contracting goals; and completely execute the plan.
- Seek to unbundle contracts, for maximum small business opportunity
- Provide documentation that demonstrates how established goals were met or exceeded.
- Validate maximum practicable utilization of small business by utilizing the tools available to DOE contractors as established in Acquisition Letter 2002-02 with an emphasis in Part II, items B, C, E and F.
- Educate the small business community on a quarterly basis in doing business with the Hanford Site and adequately notify them of upcoming procurements (e.g. post on the internet on a 90-day rolling average).
- Participate in quarterly meetings with local small business owners, for the purpose of expanding small business opportunity

3C. Pollution Prevention and Waste Minimization:

Performance Expectation:

- Establish/maintain a Pollution Prevention and Waste Minimization program that consistently meets or exceeds DOE goals and successfully proposes and executes Return-on-Investment projects

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

ORIGINAL

Determination of Fee:

The fee determination shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations above, and giving consideration to input provided by Direct Reports to the RL Manager and a sampling of small business owners.

Performance Objective/Measure 4 - Effective Leadership: Provide leadership to ensure management effectiveness, meet customer needs and respond to areas for improvement.

Effective and responsible leadership is expected to guide and direct activities and work to achieve desired outcomes for all contract activities, including those activities for which there are no specific performance incentives.

4A. Customer/Stakeholder/Employee Interfaces: Provide a culture that results in:

Performance Expectation:

- Constructive cooperation and openness with regulators and stakeholders.
- Cooperative interface with other site entities for site-wide planning of work
- Being responsive to customer direction and requirements of the CO and/or COR.
- Open communication with employees
- Timely response to employee concerns.
- Utilize hands on employee training through facilities like HAMMER, as appropriate based on applicability, schedule, and cost

Determination of Fee:

The fee determination shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations above, and giving consideration to input provided by Direct Reports to the RL Manager, and input from EPA, Department of Health and Department of Ecology regulators as well as a random sampling of stakeholders.

Performance Objective/Measure 5 - Effective interface with and support of other site contractors: Provide efficient and cost effective site services equitably to other site contractors; collaborate and participate proactively with other site contractors to meet Hanford missions and key outcomes.

5A. Provide support to other Site Contractors: FHI shall ensure efficient and effective site infrastructure and support services (e.g., emergency preparedness, fire system maintenance, sanitary waste, utilities, etc) are provided to other site contractors (e.g. CHG, BHL, Battelle) commensurate with site mission needs. Services shall be performed with fairness and equal treatment to all site prime contractors. The contractor shall be responsive to site service customers.

Performance Expectations:

Note: FHI shall establish performance metrics associated with the specific expectations cited below where applicable and as agreed to by DOE-RL. The metrics shall be agreed upon and placed into effect within 30 days of this incentive being signed.

- Provide the required infrastructure and support services as efficiently and effectively as possible, within constraints such as funding and labor agreements.
- Match infrastructure and service requirements in concert with mission requirements (i.e., alignment with Site Critical Outcomes).
- Provide infrastructure services to all site prime and sub-contractors in an equitable manner.

ORIGINAL

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

- Develop and implement a process to work with other Site Prime Contractors to maximize efficiency of site services, provide outstanding customer service and implement best practices from Fluor Corporate Signature Services.
- Implement the Account Manager concept for infrastructure services as proposed to RL.
- Seek feedback from customers, track service metrics, and adjust service accordingly.
- Support Site Services Board decisions that designate mandatory use of a site-wide service based on critical evaluation as to what would be in the best interest of the government/taxpayer.
- Eliminate duplicative activities.
- Right size and refurbish infrastructure to reduce energy and maintenance costs
- Consolidate site facility maintenance
- Evaluate and pursue outsourcing opportunities
- Evaluate methods for lowering office space costs (e.g. commercial build-lease to lower capital requirements)

Determination of Fee:

The fee determination shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations above, and giving consideration to input provided by Direct Reports to the RL Manager and the DOE-ORF Manager. Emphasis will be placed on integration of site services and customer satisfaction. DOE-RL will evaluate the contractor's feedback mechanism on customer service, independently observe the metrics, and obtain feedback from site service customers (e.g. CHG, BHI, Battelle, etc) during its fee determination. DOE-RL will independently observe and/or verify the metrics associated with the applicable expectations above.

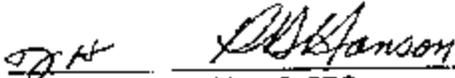
COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator to determine actual performance to the requirements stated above.*

The Contractor shall provide a self-assessment addressing each performance expectation under this Performance Incentive by October 31 of each year. This is in addition to self-assessments specifically identified within the Performance Objective(s)/Measure(s).

FY01-FY06 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-1

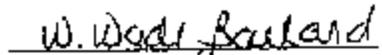
SECTION 6
SIGNATURES

ORIGINAL

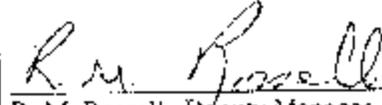


R.D. Hanson, President & CEO
Fluor Hanford, Inc.

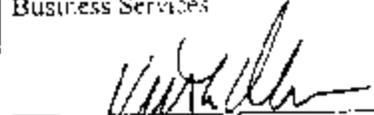
12/20/00
Date


W.W. Ballard, Assistant Manager
For Planning & Integration

12/20/00
Date


R.M. Rossell, Deputy Manager
Business Services

12/20/00
Date


K.A. Klein, Manager
Richland Operations Office

12/21/00
Date

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Hanford Site Services Performed by FH for CHG and by CHG for FH**

ORIGINAL

**SECTION 1
GENERAL INFORMATION**

Performance Incentive Number: FHI-Comprehensive-2
 Performance Incentive Short Title: Hanford Site Services Performed by FH for CHG and by CHG for FH
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: 5.34% of total available fee

Performance Incentive Type:
 (check appropriate box) Regular Stretch Superstretch

**SECTION 2
PERFORMANCE OUTCOMES**

Check appropriate box:

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
PERFORMANCE OBJECTIVE (S), MEASURES AND EXPECTATION (S)**

List associated performance objectives, measures, and performance expectations for FY02 through FY 06. Identify associated PBS # for each performance objective and/or measures as appropriate.

Performance Objective: Incentivize CHG and FH to mutually support mission and project goals and commitments.
 Measure 1: CHG/FH provide appropriate service forecasts and responsively deliver services when required.
 Measure 2: CHG/FH deliver services on time and within budget.

**SECTION 4
FEE SCHEDULE**

Identify fee schedule by performance objective and/or measure(s)

Performance Objective: 5.34% of total available fee (Measures 1 and 2)
 Measure 1: 66% available fee will fund this performance objective.
 Measure 2: 34% of available fee for this performance objective.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this performance measure. The requirements listed below are the gateway only requirements for this Performance Measure.

Not Applicable

**FY2001 – 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Hanford Site Services Performed by FH for CHG and by CHG for FH**

ORIGINAL

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall meet the specific completion criteria and expectations set forth in this Performance incentive.

DEFINE COMPLETION: (Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared).

Performance Objective: Incentivize CHG and FH to mutually support mission and project goals and commitments.

CHG and FH shall be jointly incentivized to:

- Work together in a spirit of cooperation; and
- Plan and schedule and communicate required support to and from FH and CHG; and
- Meet cost and schedule requirements when FH supports CHG and when CHG supports FH; and
- Work together to reduce the cost of these services without compromising the quality or timeliness of delivered services.

Measure 1: CHG/FH provide appropriate service forecasts and responsively deliver services when required.

Performance Expectations:

CHG and FH shall be jointly incentivized to meet the performance objectives above for the following services:

- 242-A Evaporator
- 200 Area Liquid Effluent Treatment Facility (ETF)
- Laboratory Analysis (includes 222S, and WSCF, etc.)
- Fabrication Shop
- Crane and Rigging
- CHG Support (includes Vent and Balance, Job Control System and Waste Receipt and Disposal from 222S and PFP)
- Shared Services (includes Business and Financial systems, Roads and Grounds, Records Management, etc.)
- Other Service Centers (includes Fleet Maintenance, Occupancy, Reproduction, etc.)

FH and CHG will establish an annual baseline through service level agreements for the above service areas prior to the beginning of the fiscal year. (FY01 only-baseline will be established by January 30, 2001, for those areas where SLA's do not already exist). FH and CHG will periodically review the forecasts and service performance, and must mutually agree to baseline modifications.

Measure 2: CHG/FH Deliver services on time and within budget.

Performance Expectation:

- CHG/FH deliver services on time and within budget.

Determination of Fee:

Total available fee is 5.34% of the total fee pool.

Measure 1: 66% of available fee will be tied directly to CHG and FH's level of responsiveness in services, and quality of forecasting on service consumption. The fee determination will be made by the DOE-RL Manager and the ORP Manager, or their designees, based on satisfactory accomplishment of the performance expectations above, based upon the composite results of both FH's and CHG's efforts. FH and CHG will receive the same evaluation and fee percentage.

**FY2001 - 2006 MULTI-YEAR PERFORMANCE INCENTIVE:
Hanford Site Services Performed by FH for CHG and by CHG for FH**

ORIGINAL

Measure 2: 34% of available fee will be tied directly to not incurring unfavorable cost variance greater than 10.0 percent, measured for the FH/CHG committed total budget and actual values of the services listed above, at the end of each fiscal year. FH/CHG will meet schedule commitments as mutually agreed to, in support of major milestones. Changes to plan and schedule must be mutually agreed to between the two contractors.

DEFINITIONS: *(define terms)*

None

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator, to determine actual performance to the requirements stated above).*

CHG and FH will provide a joint annual report of performance against the performance expectations by 11/15 of each year.

ASSUMPTIONS/TECHNICAL BOUNDARY CONDITIONS AND REMEDY STATED. *(For reasonably foreseeable impacts to performance, which are not covered under the Contract. If the assumption or condition proves false the remedy shall be in effect. If remedy is not possible the next step is renegotiation).*

1. There will be a duplicate, equivalent percentage valued PI between DOE ORP and CHG for fiscal years 2001 through 2006.
2. SLA's will not be established for those service areas that are high volume transactional and have low dollar value per transaction as mutually agreed to by CHG and FH.

**SECTION 6
SIGNATURES**


R.D. Hanson, President: CEO
Fluor Hanford, Inc.

12/20/00
Date


K.A. Klein, Manager
Rich and Operations Office

12/20/00
Date

FY 2001 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-3

**SECTION 1
 GENERAL INFORMATION**

ORIGINAL

Performance Incentive Number: FHI - Comprehensive-3
 Performance Incentive Title: Comprehensive Performance (Areas for Improvement)
 Revision Number & Date: Rev. 0, 12/14/00
 Maximum Available Incentive Fee: Up to 0.3% of the fee available in Contract Clause B.4
 Performance Incentive Type: Regular Stretch Superstretch
(Check appropriate box)

**SECTION 2
 PERFORMANCE OUTCOMES**

Check appropriate box.

- Outcome #1: Restore the River Corridor for multiple uses
- Outcome #2: Transition Central Plateau to support long-term waste management
- Outcome #3: Put DOE Assets to work for the future

**SECTION 3
 PERFORMANCE OBJECTIVE (S) MEASURE (S) & EXPECTATION (S)**

List associated performance objectives, measures, and performance expectation. Identify associated PBS# for each performance objective and/or measures as appropriate

Performance Objective/Measure 1: Areas for Improvement: Apply management attention and corporate leadership to improve performance and ensure project success.

- **Infrastructure Management.** FHI commits to establish a "shopping mall model" for providing site services. In such a model, FHI will work with RL and the site contractors in the establishment of base services and will work with each tenant contractor for determining the quality and level of services to provide to each tenant contractor. RL will seek input from each tenant contractor for performance assessment purposes. Plan for a new service model with new cost allocation methods if needed, will be fully developed by September 30, 2001 at the latest.
- **Breakthrough Initiatives.** FHI will develop and implement breakthrough initiatives to maximize site cleanup progress. Such initiatives will be proposed by June 30, 2001 to include baseline changes, validated costs and superstretch performance incentives.
- **Project Management.** A project operations center will be established and fully implemented by June 30, 2001. This center will employ FHI's commercially based project management methods and will entail assigning up to 100 FHI Corporate personnel to the Hanford project. Implementation is defined as:
 1. Complete FHI staff additions.
 2. Complete reassignment of personnel to the project operations center.
 3. Complete training of affected personnel to new/modified procedures.
 4. Complete preparing and issuing new/modified procedures.
- **Quality Assurance and Self Assessment.** An Office of Independent Assessment will be established by March 31, 2001. This office will gather and analyze performance data in an integrated fashion, direct a self assessment program, build an integrated improvement agenda and evaluate progress on improvements.
- **Make/Buy Program.** FHI commits to fully implement their Make/Buy Plan by June 30, 2001, with the greatest emphasis on outsourcing work through use of a competitive procurement process (subject to the provisions in the collective bargaining agreement). A requirement to increase opportunities for competitive procurements will expand opportunities for small business. Make or buy exceptions to the approved Make/Buy Plan will be submitted to DOE-RL for further review and approval.

FY 2001 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-3

**SECTION 4
FEE SCHEDULE**

ORIGINAL

Identify fee schedule by performance objective and/or measure(s)

Performance Objective/Measure 1: **Areas for Improvement:** Incentive fee of up to 100% of the fee allocated to this performance incentive.

**SECTION 5
PERFORMANCE REQUIREMENTS**

PREVIOUS YEAR'S GATEWAY: *Describe previous year's gateway (if applicable) that must be completed before fee can be paid under this Performance Incentive. The requirements listed below are the gateway only requirements for this Performance Incentive.*

Note:

GENERAL REQUIREMENTS: In order to earn incentive fee under this Performance Incentive, the Contractor shall:

1. Fully comply with all terms and conditions of the Contract. Nothing in this Performance Incentive shall relieve the Contractor from complying with any terms and conditions of the Contract, and
2. Meet the specific completion criteria and expectations set forth in this Performance Incentive.

DEFINE COMPLETION: *(Specify Performance Elements and describe indicators of success (quality/progress). Include baseline documentation/data against which completion documentation should be compared.*

Performance Objective/Measure 1: **Areas for Improvement:** Apply management attention and corporate leadership to improve performance and ensure project success.

Performance Expectations:

Determination of Fee:

The fee determination shall be made by the DOE-RL Manager, or his designee, based generally, but not exclusively, on satisfactory accomplishment of the performance expectations and criteria above, and giving consideration to input provided by Direct Reports to the RL Manager.

COMPLETION DOCUMENTS LIST: *(In addition to the Completion Notice the document(s) that should be submitted/data that should be available/actions to be taken by evaluator to determine actual performance to the requirements stated above.*

The Contractor shall provide a self-assessment addressing each performance expectation under this Performance Incentive by October 31 of each year. This is in addition to self-assessments specifically identified within the Performance Objective(s)/Measure(s).

FY 2001 CONTRACT PERFORMANCE INCENTIVE: FHI Comprehensive-3

SECTION 6
SIGNATURES

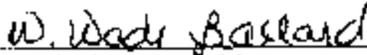
ORIGINAL



R.D. Hanson, President & CEO
Fluor Hanford, Inc.

12/20/00

Date



W.W. Ballard, Assistant Manager
For Planning & Integration

12/20/00

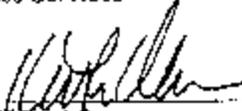
Date



R. M. Rosselli, Deputy Manager
Business Services

12/20/00

Date



K.A. Klein, Manager
Richland Operations Office

12/20/00

Date

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

SECTION J

APPENDIX F

MANAGEMENT AND INTEGRATION PLAN

INTRODUCTION

This plan shall be developed and maintained by the Contractor and shall be the executive summary of the total management process the Contractor will use at Hanford. A key element of this plan is the proposed management system including integrated technical, cost, and schedule control requirements. The plan will define the approach the Contractor will use to accomplish the work as defined in Section C, Statement of Work. The plan shall include the Subcontractor structure to best integrate and manage operational tasks and project activities. The Contractor shall also provide the following subject specific plans which expand on the discussion in the management and integration plan as appendices to it:

A. Litigation Management Plan

The purposes of the Litigation Management Plan will be to control the cost of litigation, to provide for an appropriate level of private counsel, and to define reporting requirements.

The Plan shall comply with the Guidelines set in Contractor Litigation Cost Policies, 61 CFR 14763, April 13, 1996 and such further instructions as provided by the Contracting Officer.

B. Information Resources Management Plan

The Contractor shall develop an Information Resources Management plan that integrates the entire site and provides compatibility with the present systems. For example, the Contractor shall choose a financial system that best integrates the entire financial data of the site, provides prompt information as required, and provides data that can be used for decisions. The Contractor shall provide a system compatible with present equipment.

C. Internal Audit Plan

The Contractor shall submit an annual plan for internal audits of the Contractor and for audits of major onsite, cost reimbursement subcontractors. The Plan shall list planned actual audits or areas to be audited and a schedule for such audits. The official audit report(s), including the working papers (as required), shall be submitted or made available to the Contracting Officer or his/her designee.

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

SECTION J

APPENDIX F

**ENVIRONMENT, SAFETY, AND HEALTH BUDGET
PLANNING AND EXECUTION**

The following represents additional criteria for environment, safety and health budget planning and execution, to be included as part of the requirements of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution" (June 1997). Paragraphs (d) and (e), of this contract.

1. ES&H PLAN FOR BUDGET EXECUTION YEAR

- Respond to the most recent Unicall Submittal, incorporate budget decisions, and include any new information for the upcoming execution year.

1.1 ES&H Risk Management Conclusions

- Summarize the risk management conclusions for the upcoming execution year (updated to reflect recent budgeting decisions), including a summary decision of the major risks and important ES&H issues being managed at the facility.

1.2 ES&H Budget Summary

- Summarize the ES&H budget for the upcoming execution year (analogous to the cost prepared for the Unicall Submittal).

1.3 Performance Measures and Commitments

- Include the proposed ES&H performance commitments (measures) for the upcoming execution year. It is important that these performance measures address the most significant risks identified, and have performance criteria that are measurable.

2. SUMMARY OF PREVIOUS YEAR'S ES&H PERFORMANCE

- Provide a summary of the previous year's ES&H performance, including the actual costs of implementing the ES&H activities.

2.1 Status of Performance Measures and Commitments

- Status of the previous year's performance with respect to the measures and commitments negotiated for the previous year.
- Summary level conclusions from the previous year's self assessments of ES&H programs and activities.
- Status of any major commitments arising from Consent Orders or Agreements with State Agencies or the EPA regarding environmental/ecological obligations.

2.2 Summary of Actual Costs

- Summarize the actual ES&H expenditures for the previous year, and how this information will be used in preparing the ES&H Plan for the next budget cycle.

(See DOE letter 98-PRO-645 clarifying Appendix F.)

**PART III - LIST OF DOCUMENTS
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SECTION J

APPENDIX G

**GUIDANCE FOR
PREPARATION OF DIVERSITY PLAN**

The purpose of this Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues may already be addressed in a contract package. To the extent these issues are already addressed in a contract, the Contractor need only summarize or cross reference the parts of the Plan already developed elsewhere in the contract. The Contractor shall submit to DOE an updated Diversity Plan each January.

Work Force

This contract includes certain provisions on Equal Opportunity and Affirmative Action. These provisions are found in clauses contained in Section I, entitled, FAR 52.222-26 Equal Opportunity (FEB 1999), FAR 52-222-27 Affirmative Action Compliance Requirements For Construction (FEB 1999), FAR 52.222-35 Affirmative Action For Special Disabled Veterans And Veterans Of The Vietnam Era (APR 1998), FAR 52.222-36 Affirmative Action For Workers With Disabilities (JUN 1998), and FAR 52.222-37 Employment Reports On Disabled Veterans And Veterans Of The Vietnam Era (JAN 1999), and regulatory guidance is found at FAR Part 22 (48 CFR Part 22). The Contractor should discuss its policies and plans for implementation of these provisions in its operations. If the Contractor already has procedures in place, these should be discussed and copies of any policies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the offer submitted under this RFP or in the executed contract and could include: educational assistance allowances, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any programs supporting Historically Black Colleges and Universities.

Employee training and educational opportunities may also be subject to collective bargaining agreements at the site. If that is the case, it is not the Department's intent that the Contractor develop an independent structure for employee training and educational opportunities. In preparation of its Diversity Plan, the Contractor should outline the requirements already placed on it under existing bargaining agreements, discuss any proposals for changes to be raised at any future bargaining sessions, and discuss any educational or training programs which it operates, or will operate, independently of those provided by the unions.

Community Involvement and Outreach

An offer submitted under a RFP or contained in the executed contract may include a section already dealing with community involvement and outreach activities. In that event, those sections may be cross-referenced and do not need to be repeated. Contractor community relations activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. Depending upon the terms negotiated between the Department and the Contractor, some of these costs may be reimbursable. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

The RFP or finalized contract action will contain FAR 52.219-9 "Small Business Subcontracting Plan" (OCT 1999) and other small business related clauses. (see Section I, Clauses entitled, FAR 52.219-8 Utilization Of Small Business Concerns (OCT 1999), FAR 52.219-9 Small Business Subcontracting Plan (OCT 1999), FAR 52.219-10 Incentive Subcontracting Program (JAN 1999), and FAR 52.219-16 Liquidated Damages--Subcontracting Plan (JAN 1999). Additionally, the RFP contains additional guidance in an Appendix entitled "Small Business Subcontracting Plan" (see Section J, Appendix I). If the Contractor has already met the requirements under the contract clause entitled, "Small Business Subcontracting Plan," and the referenced Appendix, this information should be briefly summarized and/or provided as an attachment to the Diversity Plan. If the Contractor is participating, or plans to participate, in the Department's Mentor Protégé Program, this involvement, or planned involvement, should be summarized or discussed. Information concerning its subcontracting plans already developed and submitted by the Contractor does not need to be redeveloped or renegotiated by the Contractor.

Economic Development (Including Technology Transfer)

Many of the Department's contract actions include Technology Transfer provisions which may be found in the H Section, Special Contract provisions, or among the patent and intellectual property clauses of Section I, Standard Clauses. Planning or activities developed under the Technology Transfer clause may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business or small disadvantaged businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

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

SECTION J

APPENDIX H

(RESERVED)

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

SECTION J

APPENDIX I

**SMALL BUSINESS
SUBCONTRACTING PLAN**

(ATTACHMENT FOLLOWS)

**Small, Small HUBZone, Small Disadvantaged and Woman-Owned Small Business
Subcontracting Plan for FY 2000**

December 8, 1999

Consisting of 6 pages including this face sheet

[for further information on the Subcontracting Plan, please visit the website below:]

<http://www.hanford.gov/plmnc/contract/mods/r0089.pdf>

**Small, Small Disadvantaged and Woman-Owned Small Business
Subcontracting Plan for FY 1999**

November 29, 1998

Consisting of 6 pages including this face sheet

[for further information on the Subcontracting Plan, please visit the website below:]

<http://www.hanford.gov/phmc/contract/mods/m069/index.html>

**Small, Small Disadvantaged and Woman-Owned Small Business
Subcontracting Plan for FY 1998**

January 28, 1998

consisting of 7 pages
including this face sheet

[for further information on the Subcontracting Plan, please visit the website below:]

<http://www.hanford.gov/plmg/contract/mods/est039/index.html>

**Small, Small Disadvantaged and Woman Owned Small Business
Subcontracting Plan for FY 1997
Revised**

January 28, 1997

consisting of 7 pages
including this face sheet

[for further information on the Subcontracting Plan, please visit the website below:]

<http://www.hanford.gov/phmc/contract/mods/m039/index.html>

**PART III - LIST OF DOCUMENTS
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SECTION J

APPENDIX J

PROJECT HANFORD

Information regarding DOE organization charts for the Hanford Site work is available on the Internet at <http://www.hanford.gov/doe/hnm/org/charts.htm>.

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

SECTION J

APPENDIX K

ORGANIZATIONAL CONFLICT OF INTEREST

Complete, as appropriate, either the Disclosure Statement or the Representation, sign and date form.

Disclosure Statement: (Attach additional pages if more space is needed)

Disclose all information required in DEAR 952.209070(a)(1) (See Section K, No. 22). The list may be in columnar format showing:

- (1) The company or agency for which the work is being, has been, or will be performed;
- (2) Nature of the work (brief description);
- (3) Period of performance for the work;
- (4) Dollar value of the work; and
- (5) Sales and marketing activity.

DEAR 970.209-70(a)(2) requires a similar disclosure for any consultants and subcontractors performing covered services under the Statement of Work.

Representation

In accord with DEAR 952.209-70(b), the Offeror, _____ hereby certifies that to the best of its knowledge, no facts exist, as described in DEAR 952.209-70(a)(1), that are relevant to the work to be performed under this contract.

Signature

Offeror's Name _____

RFP/Contract No. _____

Signature _____

Title _____

Date _____

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

SECTION J

APPENDIX L

CUSTOM COMPUTER SOFTWARE AGREEMENT

1. Background

The Department of Energy ("DOE") has entered into a contract, DE-AC06-96RL13200, (the "Contract"), with Fluor Hanford, Inc. (FH) under which FH will perform certain management and integration services (the "Services") at the Hanford site near Richland, WA (the "Site"). Fluor Hanford has developed and is continuing to develop proprietary computer software relating to the management, tracking and reporting activities for complex projects ("FD Software"). FH can directly utilize certain portions of the FD Software in the performance of the Services. Other portions of the FD Software can be used as a starting point to develop software specific to the Site which is useful in the performance of the Services. Further, software will be originally developed under the Contract by FH to be used in performing the Services. To maximize the usefulness and efficiency of the foregoing software, FH will develop the interfacial software required to integrate the separate portions of the software into an internally consistent suite of project management software specific to the Site to be used in performing the Services (the "Site Software").

2. Purpose

The agreement sets forth the ownership and use rights of Fluor Hanford, FH and DOE regarding all portions of software comprising the FD Software and the Site Software.

3. Origination of Software

Fluor Hanford will provide FD Software which, in the opinion of Fluor Hanford and FH with concurrence by DOE, will be useful in the performance of Services or which will be useful in the development of Site Software. Such FD Software is identified in Attachment A (Fluor Hanford U.S. Computer Charge Schedule), hereto which shall be updated from time to time as required, and these

updates will be delivered to FH and licensed under the terms of this agreement. FH will develop software specific to its needs at the site by modification of licensed FD Software, referred to in this agreement as the site Software. Interfacial software required to integrate some FD Software will be developed by FH prior to Fluor Hanford developing that same software in its normal course of business.

4. Site Software

The purpose of the Site Software is to facilitate the performance of the Services by FH or a successor contractor. The Site Software will of necessity include trade secret information of Fluor Hanford embodied in the FD Software. The Site Software will be modified as necessary during performance of the Services in response to changing needs and conditions at the Site. Continual modification will, over time, obscure the identity of FD Software, in whole or in part, in the Site Software; however, the Site Software will still retain the Fluor Hanford trade secrets embodied in the original version of the FD Software as initially incorporated into the Site Software. The Site Software shall be known as the "Hanford Data Integrator" or "HANDI."

5. Rights in Software

48 CFR 952.227-78, RIGHTS IN TECHNICAL DATA -- FACILITY (APR SOFTWARE AGREEMENT 1984)

(a) Definitions.

(1) "Technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software databases and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, costs analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

- (i) Are not generally known or available from other sources without obligation concerning their confidentiality;
 - (ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and
 - (iii) Are not already available to the Government without obligation concerning their confidentiality.
- (3) "Unlimited rights" mean rights to use, duplicate, or disclose technical data, in whole or in part, solely in performance of the remedial services at Hanford
- (b) Allocation of rights.
- (1) The Government shall have:
 - (i) Ownership in all technical data first produced in the performance of the contract;
 - (ii) The rights to inspect technical data first produced or specifically used in the performance of the contract at all reasonable times (for which inspection of the proper facilities shall be afforded DOE by the contractor);
 - (iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require FH to actually deliver any technical data, the delivery of which is excused by this Rights in Technical Data clause;
 - (iv) Unlimited rights in technical data specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design; FH agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer; provided, that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of optional paragraph (c) hereof -- "Limited Rights in Proprietary Data;"
 - (v) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on an technical data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, FH fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the FH of the action taken.

- (2) Fluor Hanford, through FH shall have:
- (i) The right to withhold its proprietary data in accordance with the provisions of this clause; and
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirement of this contract have been met as of the date of the private use of such data. FH agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, FH shall treat such data in accordance with any restricted legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.
- (3) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.
- (c) Copyrighted material.
- (1) FH shall not, without prior written authorization of the Patent Council establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, license for Governmental purposes in the performance of the management and integration services at Hanford.
 - (2) FH agrees not to include in the technical data delivered under the contract any material copyrighted by Fluor Hanford or FH and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c) (1) above. If FH believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, FH shall obtain the written authorization of the contracting officer to include such material in the technical data prior to its delivery.

48 CFR 952.227-79, LIMITED RIGHTS IN PROPRIETARY DATA

Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, FH agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any proprietary data of Fluor Hanford specifically used in the performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered are specifically identified by FH

at the time of initial deliver to the Government or a representative of the Government, such data shall not be used within or outside the Government, except as provided in the "Limited Rights Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend."

LIMITS RIGHTS LEGEND (APR 1984)

This technical data contains "proprietary data" furnished under Contract No. DE-AC06-96RI.13200, with the U.S. Department of Energy which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside of the Government or be used for the purposes of manufacture without prior permission of the following purposes:

(a) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information or seen in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further used or disclosed; or

(b) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further used or disclosed.

In addition, this agreement shall be governed by 48 CFR 52.227-23, Rights in Proposal Data, 41 CFR 9-9.102.1, Authorization and Consent, 41 CFR 9-9.110 (a), Notice and Assistance and 41 CFR 9-9.110 (c), Reporting or Royalties, as required under Prime Contract No. DE-AC06-96RI.13200.

6. Use of Site Software

DOE is entitled to issue the Site Software in whole or in part, solely for the performance of the Services at the Site by FH or a successor contractor. FH, or a successor contractor, shall be entitled to use the Site Software solely to perform the Services at the Site. Fluor Hanford and/or FH are entitled to use internally only those portions of the Site Software required to integrate the FD Software identified in Attachment A, solely in the conductance of their normal business activities. Such use by Fluor Hanford and/or FH does not extend to the sale of said software nor to utilization of said software to perform services for others in the manner of a service bureau.

7. Protection of Trade Secrets

FH and DOE will hold all Site Software in confidence and will restrict its internal disclosure to only those FH/Subcontractors and DOE employees having a bona fide need for the Site Software who have been advised of the confidentiality and use restrictions herein. Further, FH or DOE will not disclose the Site Software, in whole or in part, to any third party. The foregoing notwithstanding, DOE may disclose the Site Software to FH's successor contractors. Prior to such disclosure, DOE will require such contractors to complete a declaration by which such contractors agree not to disclose the Site Software or any of it to any third party, not to make any

copies of the Site Software or any of it except as reasonably required to perform the Services at the Site, and not to use the Site Software or any of it other than to perform the Services at the Site.

8. Definition of Software

The terms Site Software and FD Software apply to both source and object code versions of the computer programs and include all design, interface and program specifications, flow charts, schematics, annotations and other information, documentation and manuals required to understand, operate, maintain and/or modify the computer programs.

9. License

Fluor Hanford is providing the FD Software listed in Attachment A and incorporated, the whole or part, into the Site Software in consideration of a paid up annual license fee to include upgrade costs and maintenance of [DELETE] [DELETE] for each individual software package as cited in Attachment A with unlimited site concurrent users. During the time FH is performing the Services, Fluor Hanford will provide, as part of the license fee, updates, upgrades and enhancements made to FD Software, and prompt assistance to correct or work around any errors in the FD Software listed in Attachment A. This license fee does not include installation or the cost of implementing Site Specific Enhancements.

10. Term and Termination

The term of this Agreement begins on the date first above written and continues until terminated by either party. The provisions of Paragraphs 6, 7, 11 and 12 will survive termination of this Agreement.

11. Representations and Warranties

Fluor Hanford warrants that it has full power and authority to grant the rights granted by the agreement and that to the best of its knowledge the software does not infringe or violate any patent, copyright, trade secret, trademark or any other rights of a third party. Fluor Hanford indemnifies FH and the Government for any liability including costs and expenses for infringement or violation of such third party rights.

12. General

This Agreement represents the entire agreement between Fluor Hanford, FH and DOE regarding the FD Software and the Site Software. Except for Attachment A, it will be changed only by written agreement of Fluor Hanford, FH and DOE. If one party does not enforce a particular provision of this Agreement at any particular time, that provision can still be enforced later. If any provision of this Agreement is determined to be unenforceable, the rest of the provisions still remain in effect. Headings have been used for convenience but they are not a part of this Agreement. This Agreement will be construed and enforced in accordance with the laws of the State of California.

Fluor Hanford and FH confirm their agreement to the foregoing by having this Agreement signed on their behalf in the space provided below.

FLUOR HANFORD, Inc.

FLUOR HANFORD, Inc.

BY: signed by J. Brennan

BY: signed by H. J. Hatch

NAME: Joseph L. Brennan

NAME: Henry J. Hatch

TITLE: Vice President

TITLE: President

DATE: July 10, 1996

DATE: July 10, 1996

DEPARTMENT OF ENERGY

BY: signed by John D. Wagoner

NAME: _____

TITLE: _____

DATE: _____

REDACT ALL OF
ATTACHMENT A
HERETO

**PART III – LIST OF DOCUMENTS
EXHIBITS AND OTHER ATTACHMENTS**

SECTION J

APPENDIX M

**WAGE DETERMINATIONS UNDER THE
SERVICE CONTRACT ACT**

(The following wage determinations apply)

<u>Att. #</u>	<u>Wage Determination #</u>	<u>Application Period</u>	<u>Mod. #</u>	<u># of Pages</u>
1	94-2570, Rev. 3	8/6/96 to 8/6/97	Original	22
2	94-2569, Rev. 3	8/6/96 to 8/6/97	M074	11
3	94-2569, Rev. 5 94-2570, Rev. 4	8/6/97 to 8/6/98 8/6/97 to 8/6/98	M074 M074	22
4	94-2569, Rev. 8	8/6/98 to 8/6/99	M074	14
5	98-109, Rev. 0 94-2570, Rev. 6	Per Collective Bargaining Agreements 8/6/98 to 8/6/00	M039 M039	17
6	98-0109, Rev. 1 94-2569, Rev. 10	Per Collective Bargaining Agreements 8/6/99 to 8/6/00	M089 M089	14
7	98-0109, Rev. 5 94-2569, Rev. 10 94-2570, Rev. 6	Per Collective Bargaining Agreements 8/6/00 to 8/6/01 8/6/00 to 8/6/01	M101 M101 M101	13

(Note: Of the above wage determinations, the following were issued to FH subcontractors under the Blanket Wage Determination Program with the identified application dates).

<u>Wage Determination #</u>	<u>Application Date</u>
94-2569, Rev. 3	2/28/96 to 2/28/97
94-2569, Rev. 5	2/28/97 to 2/28/98
94-2569, Rev. 8	2/28/98 to 2/28/99

SECTION J

APPENDIX M

Attachment 1

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
94-2570, Rev. 3	8/6/96 to 8/6/97	22 (Pages issued in original contract)

Note: Electronic copy can be found at:

Error! Hyperlink reference not valid. <http://www.hanford.gov/pl/mc/contract/secj.htm#m>

SECTION J

APPENDIX M

Attachment 2

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
94-2569, Rev. 3	8/6/96 to 8/6/97	11

Note: Electronic copy can be found at:

<http://www.hanford.gov/plhmc/contract/mods/m074/index.html>

SECTION J

APPENDIX M

Attachment 3

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
94-2569, Rev. 5	8/6/97 to 8/6/98	22
94-2570, Rev. 4	8/6/97 to 8/6/98	Included above

Note: Electronic copy can be found at:

<http://www.hanford.gov/phmc/contract/mods/:074/index.html>

SECTION J

APPENDIX M

Attachment 4

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
94-2569, Rev. 8	8/6/98 to 8/6/99	14

Note: Electronic copy can be found at:

<http://www.hanford.gov/plmnc/contract/mods/m074/index.html>

SECTION J

APPENDIX M

Attachment 5

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
98-0109, Rev. 00	Per Collective Bargaining Agreements	7
94-2570, Rev. 6	8/6/98 to 8/6/99	10

(pages issued in Mod M039)

Note: Electronic copy can be found at:

<http://www.hanford.gov/phn/c/contract/mods/m039/index.htm>

SECTION J
APPENDIX M
Attachment 6

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
98-0109, Rev. 1	Per Collective Bargaining Agreements	3
94-2569, Rev. 10	8/6/98 to 8/6/00	11

(pages issued in Mod M089)

Note: Electronic copy can be found at:
<http://www.hanford.gov/ph/acg/contract/mods/m089/m089.pdf>

SECTION J
APPENDIX M
Attachment 7

<u>Wage Determination #</u>	<u>Application Period</u>	<u># of Pages (Including Cover Page)</u>
98-0109, Rev. 5	Per Collective Bargaining Agreements	1
94-2569, Rev. 10	8/6/00 to 8/6/01	12
94-2570, Rev. 6	8/6/00 to 8/6/01	

(pages issued in Mod M101)

Note: Electronic copy can be found at:
<http://www.hanford.gov/plm/c/contract/mods/m101/m101.pdf>

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

SECTION J

APPENDIX N

**SPECIAL BANK ACCOUNT AGREEMENT FOR USE WITH
THE CHECKS – PAID METHOD OF LETTER OF CREDIT
FINANCING**

OCTOBER 1, 1996, THROUGH SEPTEMBER 30, 1997

(For the most recent version of Modification M089, please go to the following Internet site:

<http://www.hanford.gov/phuc/contract/mods/m89/mf089.pdf>

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

SECTION J

APPENDIX N

**SPECIAL BANK ACCOUNT AGREEMENT FOR USE WITH
THE CHECKS - PAID METHOD OF LETTER OF CREDIT
FINANCING**

OCTOBER 1, 1997, THROUGH SEPTEMBER 30, 1998

(For the most recent version of Modification M089, please go to the following Internet site:

<http://www.hanford.gov/phmc/contract/mods/m89/m089.pdf>

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

SECTION J

APPENDIX N

**SPECIAL BANK ACCOUNT AGREEMENT FOR USE WITH
THE CHECKS - PAID METHOD OF LETTER OF CREDIT
FINANCING**

OCTOBER 1, 1998, THROUGH SEPTEMBER 30, 1999

(For the most recent version of Modification M089, please go to the following Internet site:

<http://www.hanford.gov/phmc/contract/mods/m89/r.089.pdf>

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

SECTION J

APPENDIX N

**SPECIAL BANK ACCOUNT AGREEMENT FOR USE WITH
THE CHECKS – PAID METHOD OF LETTER OF CREDIT
FINANCING**

OCTOBER 1, 1999, THROUGH SEPTEMBER 30, 2000

(For the most recent version of Modification M089, please go to the following Internet site:

<http://www.hanford.gov/phinc/contract/mods/m89/m089.pdf>



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,

ORIGINAL SIGNED BY:

Sally A. Sieracki
 Contracting Officer

PRO:AEH

Enclosure

cc: J. L. Jacobsen, FHI

bcc: PRO Off File
 PRO Rdg File
 CCC Rdg File: w/encs
 Record Note: None
 A. E. Hopko, PRO
 E:\Alan\Mods\Executed Mod M126

RECEIVED
JAN 08 2001
DOE-RL/RLCC

Office >	PRO	PRO				
Surname >	HOPKO	SIERACKI				
Date >	1/3/01	5/2/01				

(Please return to Korie Garza 6-7736 A7-80/FED. FAX 6-5373)

Document No. 24949